



REPUBLIC OF KENYA



**Hengli International (Kenya) Company Limited v Joshua & 2 others (Environment & Land Case E016 of 2024) [2025] KEELC 1195 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1195 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT & LAND CASE E016 OF 2024  
MN MWANYALE, J  
MARCH 13, 2025**

**BETWEEN**

**HENGLI INTERNATIONAL (KENYA) COMPANY LIMITED ..... APPLICANT**

**AND**

**JAMES KAMISOI EVERLINE NANGORUINI JOSHUA ..... 1<sup>ST</sup> DEFENDANT**

**ROSE SHUMBA NKOLIAI ..... 2<sup>ND</sup> DEFENDANT**

**RONG FENG KENYA LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This Ruling is in respect of the application dated 10<sup>th</sup> December 2024 filed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants as well as the Notice of Preliminary Objection dated 11<sup>th</sup> December 2024 filed by the 3<sup>rd</sup> Defendant.
2. In the Notice of Motion Application the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants primarily seek the following orders: -
  - i. Spent
  - ii. Spent
  - iii. Pending the hearing and final determination of this application, this Honourable Court be pleased to issue a temporary stay of execution of the orders made by this Honourable Court on 21<sup>st</sup> November 2024 and 4<sup>th</sup> December 2024.
  - iv. That the Plaintiff's plaint dated 19<sup>th</sup> June 2024 be struck out and/or dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as it scandalous, frivolous, vexatious and an abuse of the court process.
3. The grounds in support of the Motion are interalia that



- i. The suit is a nullity abinitio as it relates to Masurura land adjudication section and there was no consent issued under section 30 of the [Land Adjudication Act](#) prior to filing of the suit hence the court lacks jurisdiction to hear and determine the suit.
  - ii. The lack of consent under section 30 of [Land Adjudication Act](#) prior to filing the suit renders it a nullity abinitio.
4. On the strength of the above the Applicants sought dismissal of the said suit.
5. The Application is supported by the supporting affidavit of Everyne Nangoruini Joshua who reiterates the grounds in support of the application and has annexed a copy of the lease indicating that the suit property is in Masurura land adjudication section.
6. The 3<sup>rd</sup> Defendant filed a Notice of Preliminary Objection dated 11<sup>th</sup> December 2024, in respect of the suit and the Application dated 3<sup>rd</sup> December 2024, on the grounds interalia,
  - i. That the suit relates to an interest in land within Masurura Land Adjudication Section and the plaintiff failure to obtain consent under Section 30 of the [Land Adjudication Act](#) divested the Honourable Court of the requisite jurisdiction to try and determine the application and suit, hence the suit is a nullity and the application having been founded on an incompetent suit cannot stand.
7. Thus, the application filed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendant as well as the Preliminary Objection filed by the 3<sup>rd</sup> Defendant raise similar legal issues as to whether in view of lack of consent, of the Land Adjudication officer, the Honourable court had jurisdiction to hear and determine application and the suit.
8. A response in the form of a Replying affidavit in respect of both the application dated 10<sup>th</sup> December 2024 as well as the Preliminary Objection dated 11<sup>th</sup> December 2024 deponed by James Akongo Ochieng, the Site Manager of the plaintiff was filed.
9. In the said Replying affidavit, Mr. Ochieng deposes interalia that the plaintiff sought for a consent under Section 30 (i) of [Land Adjudication Act](#) and annexed a letter dated 3<sup>rd</sup> June 2024 and that a response to their letter dated 12<sup>th</sup> June 2024, the sub-county Land Adjudication and Settlement officer, indicated that no consent could issue to file any suit in respect to Masurura Land Adjudication Area, due to the existence of a court order in ELC No 9/2017 which stopped the Adjudication work in Masurura including issuing of consents under section 30 (i) of the [Land Adjudication Act](#) and that having not adjudicated any rights and interests in the Masurura Land Adjudication Area; it was not possible to issue any consent.
10. The Respondent deposed that the response by the sub-county Adjudication officer thus constituted compliance with Section 30(i) as read with Section 30(3) of the [Land Adjudication Act](#), as the reasons in the stated letter meant that only the court could redress the plaintiff issues hence suit was filed.
11. The Application and the Preliminary Objection were heard simultaneously by way of oral arguments.
12. On behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendant/Applicant Ms. Kemunto learned counsel submitted that the Plaintiffs claim herein relates to an interest on the property by virtue of a lease and that Section 30(i) of the [Land Adjudication Act](#) outs the court's jurisdiction until Adjudication register is final under Section 29. That the Section 30(i) couched in mandatory terms required consent of the adjudication officer to be issued which consent is a condition precedent without which the suit is rendered a nullity. In support of the proposition Ms. Kemunto learned counsel, placed reliance of the decision in the case of [Bhaijee and another v Nondi and another](#) (Civil Appeal No 139/2019) 2022 eKLR; as well as ELC Petition No 133 of 2020.



13. The 1<sup>st</sup> and 2<sup>nd</sup> Defendant further submitted that once a consent was denied, an appeal mechanism under Section 30(3) of the [Land Adjudication Act](#) ought to have been exhausted.
14. On the strength of the above the Applicants sought for the orders in their Application.
15. On behalf of the 3<sup>rd</sup> Defendant Mr. Githinji learned counsel, associated himself with the submissions of Ms. Kemunto and further submitted that upon denial of the consent an elaborate mechanism was set out at Section 30(3) which was not followed and he urged the court to uphold the Preliminary Objection.
16. In his submissions, Mr. Wanyanga learned counsel for the Plaintiff/Respondent submitted that the issue in the case before court was in respect of a lease and not ownership and that the letter by the Adjudication officer qualifies the whole issue of consent as the area had not been adjudicated upon and hence no rights and interests had been registered. That the Appeal envisaged under Section 30(3) of the [Land Adjudication Act](#) was exercisable by an aggrieved party, and since the letter confirmed that no interests had been ascertained then Section 30(3) was not mandatory.
17. The plaintiff submits that the reasons given by the adjudication officer were not cogent and hence Section 30(1) a civil suit could be filed, since the consent had been denied.
18. In support of the plaintiffs/ Respondent's submissions Ms. Okun learned counsel appearing alongside Mr. Wanyanga submitted that Section 30(1) could not be read in isolation but must be read together with Section 29(3) which made reference to Section 24 of the [Land Adjudication Act](#). That contents of the consent are to ascertain certain rights, upon such ascertainment parties could go to court.
19. Ms. Okun Learned counsel further submitted that the Defendants had in their defences accepted jurisdiction in the matter hence the application and the Preliminary Objection were an abuse of the court process, as the dispute was not on ownership but a lease in which the Applicants had conceded to jurisdiction in any event
20. In a brief rejoinder Ms. Kemunto Learned counsel pointed submitted that jurisdiction had been denied by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants at paragraphs 12 of their Defence, and that Section 30(4) did not permit parties to approach the court. That under Section 30(1) no consent can be given where adjudication is ongoing and that Section 2 of the Act defined an interest to include a lease.
21. Mr. Githinji in his brief rejoinder submits that in the Bhaijee decision cited by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants Advocates a lease was held to be an interest in land covered under Section 30, and that an objection on jurisdiction could be raised at any point.
22. Before framing issues for determination, the court note the following two uncontested issues;
  - i. That Masurura Area in which the lease subject of this suit is an Adjudication section.
  - ii. That no consent of the Land adjudication officer was issued before filing of the suit.

### **Issues For Determination**

23. Having analyzed the applications supporting and Replying affidavits, the annexures, the submissions and considered the law, the issue for determination are as follows;
  - i. Whether or not the application and the Preliminary Objection are merited.
  - ii. What orders ought to issue?



## Analysis And Determination

24. In order to determine the first issue as to whether the application is merited the court shall examine the provisions of the [Land Adjudication Act](#), and determine sub issues that arose in the submissions, to wit,
25. Mr. Wanyanga for the Plaintiff/Respondent submitted that the issues in the suit was not an ownership claim but the same related to a lease, and that leases were not interests in land envisaged under Section 30(1) of the [Land Adjudication Act](#). In response Ms. Kemunto submitted that a lease was an interest in land in terms of Section 2 of the [Land Adjudication Act](#), while Mr. Githinji submitted that a lease was recognized as an interest in hand in the decision of Bhaijee decision.
26. Section 2 of the [Land Adjudication Act](#) provides as follows;
- “interests”, in relation to land, includes absolute ownership of the land and any right or interest in or over the land which is capable of being registered under the Registered [Land Act](#) (Repealed).
27. Under Section 47 of the Repealed Registered [Land Act](#), a lease exceeding two years needed to be registered in the encumbrances section of the Register it follows that a reading of section 2 of the [Land Adjudication Act](#) together with Section 47 of the Repealed Registered [Land Act](#), which is referred to in the said section 2, a lease is an interest in land and therefore section 30(1) of the [Land Adjudication Act](#) applies to leases as interests in land, in this matter the lease was for a period of 10 years thus requiring registration and hence created is an interest for purposes of section 30(1) of the [Land Adjudication Act](#). On this score the court agrees with the Applicants that a lease requiring to be registered and exceeding 2 years is an interest in land which required consent to be given under section 30 (1) of the [Land Adjudication Act](#).
28. Ms. Okun submitted rather strangely that the Defendants had conceded to the jurisdiction of the court, a fact which was disputed by Ms. Kemunto for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants who pointed that at paragraph 12 of their defence they had disputed the jurisdiction. The court has perused the 1<sup>st</sup> and 2<sup>nd</sup> Defendants statement of defence and indeed they dispute the jurisdiction at paragraph 12 thereof.
29. It is trite law that jurisdiction is regulated by law and parties cannot confer jurisdiction on the courts when none exists as was held case of [Owners of the Motor Vessel “Lilian S. v Caltex Oil \(Kenya\) Ltd](#) civil Appeal No 50 of 1989. That is why the court found Ms. Okun’s submission strange in light of the established and settled law on jurisdiction as espoused in the Owners of Motor vessel Lilian
30. Section 30(1) of the [Land Adjudication Act](#) which forms the gravamen of the Application and the Preliminary Objection provides as follows;
30. staying of land suits
- “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 the Act”.
31. The import of the said section was considered by the court of Appeal in its decision in the case of [Bhaijee and another v Nondi and another](#) civil appeal No 139 of 2019 (2022 KECA 119 KLR) “Where the court held inter alia “that the lack of consent rendered the suit and the entire proceedings a nullity”.



32. Having noted the effect of lack of consent under Section 30 (1) of the *Land Adjudication Act*, it follows that the application and the Preliminary Objection have merited.
33. On issue number 1, the Application seeks dismissal of the entire suit together with the Application dated 19<sup>th</sup> June 2024. Having found that this application is merited and that the entire suit to be a nullity for lack of the consent of the Land Adjudication Officer prior to the filing of the suit, this suit is thus a nullity ab intio and the application dated 18<sup>th</sup> June 2024 has no foundation to stand on and all the orders issued pursuant to the said application are thus vacated.

### **Disposition**

34. The orders commending themselves to the court is that the application dated 10.12.2024 as well as the Notice of Preliminary Objection Dated 11.12.2024 thus succeed in terms that that the Application dated 19<sup>th</sup> June 2024 and the entire suit are hereby dismissed with costs to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.
35. Orders Accordingly.

**DATED AND DELIVERED AT KILGORIS THIS 13<sup>TH</sup> DAY OF MARCH 2025.**

**HON. M.N. MWANYALE**

**JUDGE**

In the presence of

C/A Emmanuel/Slyvia

Mr. Wanyanga for the Plaintiff

Mr. Githinji for the 3<sup>rd</sup> Defendant and holding brief for Ms Kemunto for 1<sup>st</sup> and 2<sup>nd</sup> Defendants

