



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**E.L.C. NO 219 OF 2014**

**FORMERLY KERUGOYA 523 OF 2013**

**SAMUEL KIVUTI CIRIBA.....PLAINTIFF**

**VERSUS**

**JOEL KITHAKA MARINGA.....DEFENDANT**

**RULING**

1. The defendant has raised a preliminary objection in respect of this suit. According to him, the suit is not properly before this court. The reason he gives is that the suit land is within the adjudication section within the meaning of the Land Adjudication Act.
2. In terms of the Land Adjudication Act, the plaintiff is required to have obtained the consent of the Land Adjudication Officer before the filing of this suit. It is for this reason that the defendant requires that it be dismissed for being in contravention of this mandatory provisions of the Land Adjudication Act.
3. The plaintiff has opposed the preliminary objection. According to him, the process of adjudication is completed. All that is remaining is the issuance of title deeds as there is no appeal pending before the Minister of Lands. He has cited section 29 of the Land Adjudication Act Cap 284 in support of his case. He has also cited the case of *Moses Mbuvi Kithi v. Kalikanda Mwola (2008) eKLR* in which the High Court (Lenaola, J) in applying the provisions of section 30 of the Land Adjudication Act.
4. Counsel for the plaintiff has also cited the Court of Appeal case of *Ntika Munoru and another v. Isaac Kaberia Etirika at Nyeri Civil Appeal no. 278/2007*. In that case, the Court of Appeal held that the appellant was entitled to seek relief in a court of law because all that was remaining in the suit land therein which was similarly under adjudication as in the instant case, was the issuance of a title deed.
5. In that case also there was no pending appeal. According to that court, the filing of a case in court by the appellant before the issuance of a title deed for the suit land that was within the adjudication section was proper. That case is on all fours that with the instant case. The authority of that case is binding on this court.
6. I have considered the submissions of both counsel in the light of the law applicable and I find that there is merit in the submissions of counsel for the plaintiff. I find that although the suit land is still under adjudication in the sense that only the issuance of a title deed is what is remaining, the plaintiff has acquired rights which should be protected by law.
7. This court is vested with both legal and equitable powers for purposes of protecting rights that are recognized by law.
8. In the circumstances, it has been shown that the plaintiff has acquired rights in the suit land which should be protected. It will therefore be unfair to drive him out of the seat of judgement on account of what I consider to be a technicality.
9. In the light of the foregoing matters I hereby dismiss the preliminary objection and direct that the suit proceeds to trial.
10. The plaintiff is awarded the costs of this application.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this **22<sup>nd</sup>** day of **APRIL 2015**.

In the presence of Mr. Njoroge holding brief for the Mr. Andande and Mr. for the defendant

Court clerk Mr Muriithi

**J.M. BWONWONGA**

**JUDGE**