



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC APPEAL NO. 96 OF 2019

PETER CHEBERE.....APPELLANT

VERSUS

M'INANGA M'AKWALU.....1ST RESPONDENT

KIUNGA M'AKWALU..... 2ND RESPONDENT

SILAS ITONGA.....3RD RESPONDENT

STEPHEN MUGAMBI AMBURUGUA.....4TH RESPONDENT

DISTRICT LAND ADJUDICATION & SETTLEMENT

OFFICER TIGANIA EAST.....INTERESTED PARTY

RULING

1. Before the court is the application dated 2.11.2021 seeking the court to:-

a) Cite the District Land and Settlement Officer Tigania East for disobeying the judgment of this court delivered on 14.4.2021 and

b) Order directed at the District land and settlement officer Tigania East to hear the applicant's complaint which was served upon him on 26.4.2021.

2. The application is supported by the affidavit sworn on by Peter Nchebere on 2.11.2021.

3. The grounds of the application are that following a successful appeal, the applicant in line with the judgment formally lodged his complaint with the interested party on 26.4.2021 but the said officer has adamantly refused to receive it on the basis that his appeal was dismissed.

4. That as a consequence the applicant avers he stood to suffer irreparable loss and damage for he was likely to lose his land even though the adjudication process was still on.

5. In reply to the notice of motion, the interested party filed a replying affidavit sworn by E.M. Kamaru on 6.12.2021. He acknowledged receiving the complaint on 26.4.2021 regarding the suit **Parcel No's 3543, 1664 and 5930 Athinga/Athinja/Adjudication Section** pursuant to the judgment.

6. He averred he sought advice from the principle litigation counsel and was advised to summon the parties for rehearing of the objection proceedings in compliance with the judgment despite the finality of the objection pursuant to **Section 27 of the Land Consolidation Act** and the subsequent issuance of title deed in 2018.

7. Thirdly, the interested party averred he summoned the parties on 18.11.2021 for a meeting on 3.12.2021. However, he received a letter dated 25.11.2021 from the firm of Maitai Rimita Advocates on behalf of the respondents stating he had no jurisdiction on the suit land since title deeds were already out and hence the land adjudication officer lacked any jurisdiction over titled land.

8. In the letter attached as **EMK 1**, the interested party states the objection was likely to affect **Parcel No's 3543, 1664, 1504 and 593 Athinga/Athinja Registration Section** where title deeds had been issued to the respondents.
9. The interested party averred the action would be an effort in futility to hear the objection when title deeds were already out.
10. In brief, oral submissions in support of the application, Mr. Kimathi Advocate urged the court to compel the interested party to obey the court orders and hear the complaint as directed.
11. On his part, Mr. Kieti the Principal State Counsel stressed that the interested party was keen on having the issue resolved hence there was no attempt or intention to disobey the court orders.
12. In a rejoinder, Mr. Kimathi submitted an implementation of a court order could not be stopped by a mere letter written by the respondents' lawyers since it had no force of law. He urged the court to find anybody opposed to an application must come to court and oppose it instead of engaging in letter writing.
13. Given the application by the interested party, Mr. Kimathi abandoned prayer No. 2 of the application but urged the court to allow prayer No. 3 of the application.
14. The court has gone through the application and the response together with submissions by parties. The issue for determination is whether the application had any merits and secondly is whether the judgment could be implemented by the interested party given the suit land no longer fall under its jurisdiction.
15. The applicant filed this suit on 19.4.2011. A temporary order of injunction was issued on 5.5.2011 restraining the respondents from evicting him from **Parcel No's 3543, 1684, 1504 and 5930 Athinga/Athinja adjudication section**.
16. In one way or the other, the applicant sought and obtained an order in **Meru High Court Misc. No. 18 of 2008** on 19.11.2020. It is not clear if the applicant extracted the order and served it upon the interested party for its implementation and or for rehearing of the objection.
17. Instead of following up the execution of the aforesaid order, it appears the applicant instituted the suit in the lower court to forestall impending eviction from the suit land by the respondents.
18. The applicant under **Section 4 of the Limitation of Actions Act** had to execute the decree from Meru HC Misc. No. 18 of 2008 before expiry of 12 years.
19. Additionally, when the appellant came to court on this appeal, he did not at the same time follow up his rights under the **Land Consolidation Act** to ensure his ascertainable rights were protected within the internal dispute mechanism set up under the **Act**.
20. In the instant application, the applicant is seeking orders which ideally he should have included in the judicial review matter namely orders of mandamus and prohibition.
21. The interested party has stated it is impossible or impracticable to implement the court order and or that any rehearing of the objection would be an effort in futility given the suit lands are no longer governed by both **Cap 283 and 284 but the Land Registration Act and the Land Act 2012.**
22. Faced with a similar situation, **Mutende L. J. in Republic –vs- Director of Land Adjudication and Settlement & 5 others Ex Parte Levi William Muoso & another [2015] eKLR** held:
- “There being evidence of registration and issuance of title, this court could only issue an order of prohibition after the decision made by the Director and consequently the Chief Land Registrar quashed and expunged from the record***
- This court cannot make an order in vain.***
- An order of mandamus could only have issued against the land adjudication officer to hear and determine the objection if the duty he was required to do had not been overtaken by events. Subsequently, orders by the Director and the Chief Land Registrar having not been set aside, the officer cannot be commended to hear the objection in vain.....”***
23. The applicant was issued with a consent to sue dated 13.4.2011. The consent stipulated that for the completeness of the adjudication registrar for the section, he was under an obligation to provide the interested party with a copy of the final orders made for each case.
24. The applicant has not stated in his supporting affidavit if he ever supplied the decree quashing the objection proceedings in 2010 to the interested party. As things stand now, the order is overtaken by events and is also based on a decree whose enforcement offends **Section 4 of the Limitation of Actions Act**. The orders sought in the application are also res judicata.
25. In the premises, I find the application dated 2.11.2021 lacking merits. The same is dismissed with no orders as to costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU THIS 16TH DAY OF FEBRUARY, 2022

In presence of:

Kimathi Kiara for applicant

Kieti for interested party

Court Assistant - Kananu

HON. C.K. NZILI

ELC JUDGE