



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC PETITION NO. 14. OF 2019

PAUL NJUGUNA KAMAU.....PETITIONER

VERSUS

TULETO OMERAE.....1ST RESPONDENT

DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER, NAROK COUNTY....2ND RESPONDENT

LAND REGISTRAR, NAROK COUNTY.....3RD RESPONDENT

THE HON.ATTORNEY GENERAL.....4TH RESPONDENT

RULING

1. What is before this court for ruling is a Notice of Preliminary Objection dated 5th October, 2021 and filed by the 2nd, 3rd and 4th Respondents wherein they seek to have the petition dated 26th November, 2018 and filed in court on 25th April, 2019 dismissed on the following grounds: -

1. That this Petition contravenes the provisions of section 29 of the Land Adjudication Act, Cap, 284 as the Petitioner did not exhaust the avenues for redress provided under section 29 of the Act.

2. That where there is a clear procedure for the redress of any particular grievance prescribed by an Act of parliament, that procedure should be strictly followed and as such this honourable court does not have jurisdiction to hear and determine this Petition.

3. The 2nd, 3rd and 4th Respondents filed written submissions dated 21st October, 2021.They have raised two issues for determination namely: -

1. Whether this suit contravenes the provisions of section 29 of the Land Adjudication Act.

2. Whether this honourable court has jurisdiction to entertain this matter.

4. The 2nd, 3rd and 4th Respondents submit that the Land Adjudication Act provides an elaborate avenue for redress of disputes arising from the adjudication process. The same is contained in **Section 29** of the **Land Adjudication Act**. They submit that in compliance with the provisions of **Section 26 of the Act**, objection number 874 was filed on 14th December, 2007.The objection was determined as per **Section 13 (3)** of the **Land Adjudication Act**. They further submit that the Petitioner did not file any appeal as provided for under **Section 29** of the **Land Adjudication Act**. They rely on the case of **Speaker of National Assembly versus Karume [1992] KLR** where the Court of Appeal held as follows: - **“Where there is a clear procedure for redress of any particular grievance prescribed by the constitution or an Act of parliament, that procedure should strictly be followed”**. The same was emphasized in the case of **Republic versus Ministry of Interior and Coordination of National Government Exparte ZTE Corporation & Another [2014] eKLR**.

5. On whether this court has jurisdiction to entertain this matter, the 2nd, 3rd and 4th Respondents rely on the case of **Samuel Kamau & Another versus Kenya Commercial Bank & 2 Others** in which the court pronounced itself that a court cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law. They submit that the petitioner failed to follow the dispute resolution mechanism set out in the **Land Adjudication Act** and therefore this court lacks jurisdiction to entertain this matter as was in the case of **Kinyamal Ole Tare versus Sotua Sakana Muya [2015] eKLR**.

6. The Petitioner filed written submissions dated 11th March, 2022 with respect to grounds of opposition dated 13th September, 2021. I have analysed the submissions and what is of relevance to this court at this stage is his submission on the jurisdiction of this court as captured in item (d) of his submissions. The Petitioner submits that the process of adjudication having been completed and title issued to the 1st Respondent is a confirmation that the adjudication process had been complete and there is no bar to a party filing a claim in court alleging unfair treatment and violation of their constitutional rights. The Petitioner submits that this court could only have been ousted if the Land adjudication process was subsisting but in the current matter where the rights of the parties have been determined the issue of jurisdiction does not arise.

7. I have analysed the written submissions filed by both parties and the issue for determination is whether this court has jurisdiction to entertain this matter.

8. A Preliminary Objection was described in the **Mukisa Biscuits Manufacturing Co. Ltd...Vs...West End Distributors Ltd (1969) EA 696** to mean: -

“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration”.

Further Sir **Charles Nebbold, JA** stated that: -

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does not nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop”.

9. This Court having made a finding on the description of a preliminary objection, it is not in doubt that a preliminary objection raises pure point of law, which is argued on the assumption that all facts pleaded by the other side are correct. However, it cannot be raised if any facts have to be ascertained from elsewhere or the court is called upon to exercise judicial discretion. In the case of **Quick Enterprises Ltd Vs Kenya Railways Corporation, Kisumu HCCC No.22 of 1999**, the Court held that: -

“When preliminary points are raised, they should be capable of disposing the matter preliminarily without the Court having to result to ascertaining the facts from elsewhere apart from looking at the pleadings.”

10. In this case, the Petitioner filed a Petition on grounds of violation of his constitutional rights over land known as NRK/Cis-Mara/Kipise/57 which he claims the 1st Respondent purported to lay claim of ownership. The 3rd Respondent purported to transfer the suit land without any powers or authority depriving the petitioner of the suit land. The respondents have also purported to hold a hearing, listen and determine cases without ever informing the petitioner or affording the petitioner the opportunity to be heard. On the other hand, by an affidavit sworn by Amos M Musyoka on 5th October, 2021 on behalf of the 2nd, 3rd and 4th Respondent, he deposed that due process was followed as per the requirements outlined in the **Land Adjudication Act** and on 15th September, 2008 the objection was heard and ruled in favour of the 1st Respondent. He further deposed that a party who feels aggrieved by the decision of the adjudication officer should appeal to the minister and the petitioner herein never filed any appeal.

11. Adjudication process is well provided in the **Land Adjudication Cap 284**. The Act outlines procedure to be followed up until issuing of title deeds. In the event that a person is aggrieved by the decision or is challenging the process thereof, he or she may file an objection with the adjudication officer in writing as is provided under **section 26** of the **Land Adjudication Act**.

12. In the event that a person is aggrieved by the determination of an objection under **section 26** of the **Act** may, within sixty days after the date of the 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 order thereon as he thinks just and the order shall be final as provided in Section 29 of the Act.**

13. Arising from what I have stated above, I am in agreement with counsel for the 2nd, 3rd and 4th Respondent that the Petitioner herein has not exhausted all avenues for redress as provided for under **section 29** of the **Land Adjudication Act**. This court therefore has no jurisdiction to entertain this petition. As such the notice of preliminary objection dated 5th October, 2021 succeeds. The Petition dated 26th November, 2018 is dismissed with costs to the 2nd, 3rd, and 4th respondents. It is so ordered.

DATED, SIGNED AND DELIVERED VIA EMAIL ON 24TH MARCH, 2022.

MBOGO C.G

JUDGE

In the presence of: -

