REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

HMCA NO. 15 OF 2002

REPUBLIC …..... APPLICANT

=VERSUS=

THE CHIEF LAND ADJUDICATION AND

SETTLEMENT OFFICER – KEIYO DISTRICT …..... RESPONDENT

AND

JOSEPH KIRUI LEKEG &

WILLIAM KIPLAGAT SAWE …..... INTERESTED PARTIES

JUDGMENT

The action before me is for Judicial Review. Specifically, the relief sought is one for PROHIBITION directed against the District Land Adjudication and Settlement Officer of KEIYO DISTRICT, Prohibiting him from preparing the Register for the LOWER SEGO ADJUDICATION SECTION.

The Court has been moved by **JOSEPH KURUI LEKEG** and **WILLIAM KIPLAGAT SAWE,** who are residents of CHANGACH, within the Keiyo District.

The Primary Complaint lodged by the two (2) gentlemen is that the District Land Adjudication Officer had wrongly included the Changach area to be a part of the Sego Adjudication area. As far as the two (2) gentlemen were concerned, Changach was outside the Sego Adjudication area, and it should remain so.

In the event that Changach was retained within the Sego Adjudication area, the two (2) gentlemen fear that that would result in a loss of their ancestral Salt Lick, to the Sego Clan.

Such a loss was seen as a definite foundation for conflicts between the Sego and the Changach clans.

In order to remedy the situation, the two (2) gentlemen asked this court to prohibit the Land Adjudication Officer from finalizing the register in which Changach was included in the Sego Adjudication area.

The District Land Adjudication Settlement Officer, Keiyo District, raised a Preliminary Objection to the action.

The first reason put forward was that the Applicants never sought leave of the Court to institute the substantive proceedings.

In any event, the law is said to bar any Court suits, except where the leave of the Adjudication officer had been obtained.

Thirdly, the Applicants were faulted for also describing themselves as **"Interested parties"**, in their own case.

Finally, the Respondent contended that the proceedings were fatally defective as they failed to disclose any cause of action.

In answer to the claim, the Respondent confirmed that when the process of adjudication commenced, there arose a dispute between the lower Sego Sub-location and the Changach Sub-location. That dispute rose in 1996, resulting in the suspension of all demarcation activities in that area, in August, 1997.

By February, 2001, the Public Barazas failed to resolve the disputes. However, the matter was finally resolved when the area Chiefs and Sub-Chiefs worked with the District Officer, to identify the actual boundaries on the ground.

According to **AUGUSTUS CHIMALIT,** the District Land Adjudication and Settlement Officer for Keiyo District, all the work that had hitherto been done outside the declared Adjudication area, were canceled.

The Respondent issued a Notice of Completion of the Adjudication Register for the lower Sego Adjudication Area on 12th June, 2001.

After the issuance of that Notice, those who felt that their property rights had been affected, filed Objection cases in relation to parcels numbered 274, 106, 96, 105, 273, 314, 275, 276 and 178, respectively.

Whilst those objection cases were still pending, the two (2) gentlemen in this case, instituted these current proceedings. They also sought and obtained an interim order barring the Respondent from undertaking any further work.

Ultimately, when the substantive action came up for hearing, the parties decided to file their respective written submissions.

The Law firm of Chemitei & Company Advocates filed submissions for **"the Applicants"**, whilst **Messrs Angu Kitigin & Company** Advocates filed submissions for the " Interested parties"; and **Mr. Joseph Ngumbi**, a Litigation Counsel at the office of the Attorney General filed submissions for the Respondent.

I have deemed it necessary to set out the appearances, as above, because, there seems to be some difficulty, in my considered view, in how the respective lawyers have described themselves. I say so because, a look at the case title shows that the Republic is the Applicant; the District Land Adjudication and Settlement Officer for Keiyo District is the Respondent; whilst **Joseph Kirui Lekeg** and **William Kiplagat Sawe** are named as Interested Parties.

In real terms, **Joseph Kirui Lekeg** and **William Kiplagat Sawe** are the Prime Movers of the Litigation before me. They are not ***"Interested Parties".***

A person is described as an **"Interested Party"** when the resolution of the dispute between the two or more protagonists, would have an impact on them too.

Ordinarily, the main protagonists are the Plaintiff and the Defendant; or the Petitioner and the

Respondent. Whilst in Judicial Review Proceedings, the main protagonists are the *" Ex-parte applicant" and the Respondent.*

Accordingly, **JOSEPH KIRUI LEKEG** and **WILLIAM KIPLAGAT SAWE** erred by designating themselves as " Interested Parties", whereas they were, (as a pair), one of the main protagonists in these proceedings.

On the other hand, it does appear to this court that the two (2) gentlemen, **JOSEPH KIRUI LEKEG** and **WILLIAM KIPLAGAT SAWE**, had chosen to describe themselves as "Interested Parties," because they were not prosecuting the claims for their personal benefits. I say so because the firm of **Angu Kitigin** & Company Advocates wrote to the Learned Registrar of the High Court on 8th June, 2005, making it clear that his clients were the following clans, who occupy the Lower Sego Adjudication area:

(a) Kaptegenui;

(b) Kapkobil;

(c) Kapchepkek;

(d) Kapsogom; and

(e) Koikwo.

Secondly, the Chief of Kibargoi Location wrote to the Senior Land Adjudication Officer of Elgeyo-Marakwet on 1st May, 1993, listing some 18 persons who were affected by the dispute in issue. **Joseph Lekeg** and **William Sawe** are on that list of 18 people.

Those particulars appear to suggest that the two (2) gentlemen had instituted these proceedings for themselves, as well as for other persons.

If that was the intention, then there should have been a Representative action, in which all persons concerned were named.

The two (2) gentlemen erred, by instituting these, apparently, Representative proceedings without following the appropriate procedure.

Even if the proceedings were to succeed, the benefit of such success could not trickle down to other persons who were not parties to the case.

The converse is equally true; that if the proceedings were to fail, the court could not condemn the un-named persons to pay the costs of the case.

It is common ground that on 12th June, 2001, the Respondent issued a Notice of Completion of the Adjudication Register.

The Applicants thereafter lodged Objections to the Register, on 10th August, 2001. The said objections, together with other objections, were in relation to a total of eleven (11) specific parcels of land.

As those parcels of land had been allocated to persons whom the objectors claim to have no legal rights thereto, that implies that each objector knew exactly who he needed to take action against, to reclaim his land.

As the Applicants (together with the other objectors) had taken the step of lodging their objections, it implied that when they later instituted these Judicial Review proceedings, they now had 2 sets of legal proceedings running simultaneously.

Whilst the existence of a particular relief is not a bar to the institution of Judicial Review Proceedings, it is definitely wrong for a party to have two or more sets of proceedings at the same time, in relation to the same subject matter, and against the same person or persons.

In this case, if the Applicants or the other objectors succeeded in their respective objections, they would not require to prosecute these judicial Review proceedings.

On the other hand, if the Applicants failed in their objection proceedings, it would be wrong to thereafter give them a second bite at the cherry, by permitting them to thereafter prosecute these Judicial Review proceedings.

In effect, I find and hold that it is an abuse of the process of the court, for the Applicants to canvass the two (2) sets of action, simultaneously, or consecutively.

If the said proceedings went on parallel to each other, there would be a real danger that the decisions of the respective decision-making bodies, could be inconsistent. If that were to happen, the Justice System would be brought into disrepute.

On the issue of Jurisdiction, there is no doubt at all that the High Court has unlimited Original Jurisdiction in Criminal and Civil matters.

Furthermore, Article 159 (1) (d) of the Constitution of the Republic of Kenya enjoins the Courts and tribunals exercising judicial authority to administer justice without undue regard to procedural technicalities.

Nonetheless, that does not mean that lawyers and their clients can completely ignore the rules of practice and procedure which have been put in place, to assist in the efficient and orderly administration of justice.

Systems and orderliness enhance the administration of justice. Therefore, it is only fair and just that parties be encouraged to abide by the rules of procedure and practice. However, I also acknowledge that substantive justice should not be sacrificed at the alter of technicalities.

The Applicants assert that the respondent went beyond its mandate in the demarcation process. They say that they were condemned unheard.

Assuming that the Applicants were right, that could have given them the right to seek an order to quash the decision made by the Respondent. However, the Applicants' only prayer is for an order of Prohibition. Specifically, they seek orders to prohibit the Respondent from preparing the Register for the Lower Sego Adjudication Section.

As the Respondent did issue a Notice of Completion of the Adjudication Register for the lower Sego Adjudication Section on 12th June, 2001, I hold that the remedy sought is no longer available to the Applicants. They are trying to lock the stable after the horse has bolted. It is too late in the day to undo that which had already been done. They cannot stop the publication of the Register after the event.

Accordingly, the claim herein has no merit. It is dismissed. **Joseph Kirui Lekeg** and **William Kiplagat Sawe** will pay the costs to the Respondent.

Finally, and for the avoidance of any doubt, this determination is not a bar to the prosecution of the Objections which the Applicants and other persons had lodged against specific parcels of land.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET,

THIS 17TH DAY OF JANUARY, 2014.

FRED A. OCHIENG

JUDGE