



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 175 OF 2013**

**LYNETTE KAGEHA KISISWA.....PLAINTIFF**

**VERSUS**

**1. ENOS CHEPTIM CHEBOWOI**

**2. PHYLIS CHEBOWOI.....DEFENDANTS**

**R U L I N G**

1. The defendants in this case filed a notice of preliminary objection based on two grounds that is;-
  - (a) That the suit herein and the application dated 19/12/2013 are incompetent and bad in law.***
  - (b) That the suit herein was prematurely presented to court contrary to the law.***
2. The advocates for the parties agreed to file written submissions in respect of the preliminary objection. The defendants advocate filed his submissions on 3/7/2014 in which he argues that the suit herein was filed contrary to the provisions of section 30 of the Land Adjudication Act Cap 284 Laws of Kenya and that the suit herein was filed by plaintiff when it ought to have been brought by way of Judicial Review for prerogative orders.
3. The plaintiff's advocate filed her submissions on 16/7/2014 in which she opposes the preliminary objection on the ground that the parcel of land in issue falls within a settlement scheme which is not within an adjudication area and that the plaintiff is seeking orders for rectification of boundary and injunction to prevent the defendants from encroaching onto the plaintiff's land. The plaintiff argues that the preliminary objection is misplaced and ought to be dismissed.
4. Section 30 (1) of the Land Adjudication Act Cap 284 provides as follows;-

***“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 (a) of the Act”***

The land in issue falls within Kitalale Settlement Scheme. The issue which then calls for determination is whether Kitalale Settlement Scheme which is within Trans-Nzoia County is within an adjudication section. Adjudication sections are created under section 5 of the Land Adjudication Act Cap 284 Laws of Kenya. The areas which fall under adjudication

area are shown under the sub-sidiary legislation contained in the Act. The rules pertaining to adjudication are also contained in the Act. If an area has not been designated an adjudication section in accordance with the Act, then the provisions of the Act cannot apply. In the present case, Kitalale Settlement Scheme is not an adjudication section and therefore the provisions of section 30 of the Land Adjudication Act cannot apply.

5. The defendants are also arguing that the plaintiff should not have moved the court by plaint. That she should have come to court by way of Judicial Review. The process of Judicial Review is invoked in matters touching on decisions of quasi-Judicial bodies or administrative decisions. In the present case, the plaintiff is seeking an injunction restraining the defendants from trespassing on to her plot known as Plot No. 853 at Kitalale Settlement Scheme. She is also asking for an order directed at the County Surveyor Trans-Nzoia to go and confirm the boundary between Plot Nos 853 and 854 at Kitalale Settlement Scheme. The plaintiff is not seeking any prerogative orders herein as to require her to come to court by way of Judicial Review. Whether the plaintiff's prayers will succeed or not will be determined at the conclusion of the case. There was no decision made which the plaintiff is seeking to quash. For the above reasons I find that the preliminary objection lacks merits. The same is hereby dismissed with costs to the plaintiff.

It is so ordered.

**Dated, signed and delivered at Kitale on this 30th day of September, 2014.**

**E. OBAGA**

**JUDGE**

**In the presence of M/S Arunga for Plaintiff.**

**Court Clerk – Kassachoon.**

**E. OBAGA**

**JUDGE**

**30/9/2014**