



Suit filed without written consent of Adjudication Officer
In an interest in land in an adjudication and S.30(1) of
Cap 284; whether court can entertain the proceedings.

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CIVIL SUIT NO. 71 OF 2010

LESIIT J.

**JOSES MATI M'MAUTA..... PLANTIFF
VERSUS**

**HON. MITHIKA LINTURI
CHIEF MICHAEL MURIUNGI & 12 OTHERS).....DEFENDANT**

RULING

The application is brought by way of a Chamber Summons dated 24th May 2010. It has been brought under Order XXXIX Rules 1 to 3 of the Civil Procedure Rules. It seeks the following orders:

1. ...
2. ...

3. That the defendants be restrained either by themselves, their servants from being on the plaintiff's plot No. 5124 and thereafter from entering the said plot situated in Kiraone, Upper Gaiti adjudication section pending the hearing and determination of this application.

4. That the defendants be restrained either by themselves, their servants from being on the plaintiff's plot No. 5124 and thereafter from entering the said plot situated in Kiraone, upper Athiru Gaiti Adjudication Section pending the hearing and determination of this suit.

5. That the costs of this Application be provided for.

It is premised on the following grounds:

a) The plaintiff is the owner of the said Plot No. 5124 situated in Kiraone, Upper Athiru Gait Adjudication Sections.

b) By virtue of its ownership, the plaintiff is entitled to the immediate and exclusive possession of the said plot No. 5124.

c) Over the years the applicant has made developments on the said plot by building permanent single storey business and residential premises. The plaintiff carries on his businesses in some of the premises and has let out the rest of the premise to his tenants. He planted bananas and pawpaw's in the undeveloped part of he said property.

d) That on 21st February 2010 the respondents caused the arrest of the Applicant on false allegations so as to enable themselves forcibly enter the Applicant's premises.

e) That in the night of 21st and 22nd February 2010, while the applicant was in custody of the police station, the respondents entered the applicants said property and broke some doors of the business premises. They also put up a barbed wire fence around the property and hung a national flag around the fence.

f) The respondents destroyed the applicant's stock in trade, personal documents and business records that were in the applicant's business premises.

g) That the applicant has no access to his property now.

h) Unless they are restrained, the defendants will interfere with the plaintiff's quiet enjoyment of his property and investment.

The application is supported by an Affidavit sworn by the Plaintiff dated 7th May 2010.

Some of the Defendants have filed Replying Affidavits to the application. The 2nd, 3rd, 4th, 6th, 7th, 8th, 9th, 10th, 11th, 12th and 13th have filed replying affidavits. They are represented by Mr. C. Kariuki Advocate. The, 5th, 6th, 7th, 9th, 10th, 11th, 12th and 13th in their affidavits have denied being at the scene of the alleged damage or removal of the fence dividing the plot allegedly owned by the plaintiff and the dispensary, the subject matter of the application.

The 2nd defendant in his Replying Affidavit deposes that he is conversant with the matter, the subject of this suit. He deposes that he is the chief of Athiru Gaiti Location where the subject plot is located. He stated that he was instructed by the District Officer of the area that in order to view the situation he should attend a peaceful demonstration to be held by members of public, in which they were complaining that the plaintiff had grabbed part of a land from a plot owned by the community where Kiraone dispensary is suited. The 2nd defendant denied any involvement in any acts by the members of public and also deposed that the plaintiff did not report any wrongs committed by any of the defendants in the suit. The 2nd defendant deposes that the application is devoid of merit as the land where the alleged plot is situated is under adjudication area, and that no relevant consent has been issued, neither is anybody in occupation of the land.

The 3rd defendant is an elected councilor of Igembe South East Ward. In his replying affidavit, the 3rd defendant deposed that he knew the plaintiff as a resident of Kiraone Area and as a member of the management of Maua Methodist Hospital which was running Kiraone Dispensary, before the community took it over. The 3rd defendant deposed that the community that took over the Kiraone Dispensary from the Methodist Church is claiming that the plaintiff grabbed the plot the subject matter of this suit from the Dispensary and built a permanent structure; and that he used his position as a member of the management of Maua Methodist Hospital to grab the plot. The 3rd defendant denies being a party to any damage or theft on the alleged plaintiff's plot. The 3rd defendant deposes further that the Athimba clan has denied giving any land to the plaintiff or to any one else and has annexed a letter from the alleged clan to support his deposition.

The 8th defendant, in his replying affidavit deposed that he was conversant with the subject matter of the suit, and that he also knows the plaintiff because the plaintiff has married his niece. The 8th defendant deposes that Kiraone were sacred grounds of the Athimba clan and that the clan on request allowed the government to build a dispensary at Kiraone before the demarcation exercise. The 8th defendant deposes that the community allowed the Methodist Church ran the dispensary which it did. That at the time the plaintiff was a member of Management Board. The 8th defendant deposes that it was a during that time

that the plaintiff used his position as member of the management team to grab part of the dispensary land, which is now the plot the subject matter of the suit.

When this application went before Hon. Kasango J. the judge directed the parties to file written submissions which was done.

In the written submissions counsel for the Plaintiff urges that the object of the injunction sought herein is to preserve the subject matter of the suit so that if the plaintiff succeeds the judgment obtained will be effectual. For this preposition the plaintiff relies on the case of Assanad Vs Pettit [1989] KLR, 24.

“To keep things in status quo so that if at the hearing the plaintiffs obtain a judgment in their favour, the defendants will have been prevented from dealing, in the meantime, with property in such a way as to make that judgment ineffectual”.

At the time the plaintiff filed his submissions through counsel, the defendants had not filed their replying affidavits. The plaintiff's arguments that the facts in his supporting affidavit have not been controverted, have been overtaken by events because all the defendants, except the 1st defendant have filed replying affidavits controverting facts deposed by the plaintiff in his Supporting Affidavit.

The Respondents advocate Mr. C. Kariuki has raised a preliminary point in his written submissions. Counsel has urged that the Area where the land, the subject matter of this suit is situated, is still under adjudication and that no consent was acquired by the plaintiff/applicant as required under Cap 283, and that therefore the instant suit may be incompetent. The applicant's advocate, Miss Wamucie who had the opportunity to highlight her submissions in support of the application did not make any comment on the issue of the competence of the suit.

Section 30(1) of the Land Adjudication Act stipulates:-

“30(1) 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(3) of this Act.”

In the plaint filed by the Applicant herein, at paragraph 18 the plaintiff deposes:

“18. The Plaintiff avers that the said plot 5124 is now situated in Upper Athiru Gaiti Adjudication Section and the same has been demarcated and surveyed in the Plaintiff's name. The Plaintiff avers that he has not been issued with a Title Deed yet because the process of adjudication and thereafter registration is not complete yet”

Under that paragraph the plaintiff concedes that the land the subject matter of this suit is situated in the Upper Athiru Gaiti Adjudication Section, and further that the process of adjudication is not yet complete.

In the Applicant's supporting affidavit, the applicant has annexed as an exhibit a letter from the District Land Adjudication and Settlement Officer, Igembe District. It is a letter dated 11th March, 2010. The last paragraph of that letter states:

“Upper Athiru Gaiti Adjudication Section is under demarcation stage Cap 284 Laws of Kenya. “

I find that paragraph 18 of the plaint, and annexure JMM2 the letter from the Adjudication and Settlement Officer, Igembe District confirmed without a doubt that the Demarcation exercise in the area where the subject land is situated is still under adjudication and that the process has not been finalized. The applicant has not annexed any letter from the Adjudication officer giving consent in writing to the institution of the suit herein. Further there is no doubt whatsoever that the plaintiff instituted these proceedings in order to enforce protection of his perceived interest in the land, the subject matter of this suit.

I find that this court is bound by the provisions of section 30(1) of the Land Adjudication Act to the extent that the court cannot entertain the proceedings. In the circumstances, in the absence of a consent in writing from the Adjudication Officer in charge of the area where the subject land is situated, and this being a case concerning an interest in land in an adjudication section, I order that the proceedings herein be stayed until further orders of this court.

DATED, SIGNED AND DELIVERED THIS 10TH DAY OF NOVEMBER, 2011

J. LESIIT
JUDGE