



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII**

Civil Appeal 154 of 2006

**(Being an appeal from the ruling of Hon. Kaberia, RM in
original Kilgoris' SRMCC No. 10 2006)**

BETWEEN

KAMAU NG'ANG'A APPELLANT

VERSUS

NICHOLAS MPONIN RESPONDENT

JUDGMENT

The respondent filed the suit against the appellant claiming ownership of parcels of land known as **Ololchani Plot Nos. 169, 176 and 179** within Trans mara District. He also alleged that the appellant had on various occasions interfered with the boundaries of the said parcels of land.

The appellant filed a statement of defence and stated that the ownership of plots Nos. 169 and 179 aforesaid was pending an appeal to the Minister for Lands and Settlement. He further stated that plot No. 176, Ololchani adjudication section is not existent, having been deleted from the adjudication records.

With regard to plots Nos. 179 and 164, the appellant stated that the boundary dispute was pending determination by the District Land Adjudication Officer, Trans-mara. The appellant further contended that the respondent's suit was barred by the provisions of **section 30** of the **Land Adjudication Act** and that the court lacked jurisdiction to hear and determine the matter.

Subsequent to the filing of a statement of defence, the appellant filed an application seeking to strike out the respondent's suit on the grounds, *inter alia*, that:

- 1. Plot Nos. 169, 174,176 and 179, Ololchani Adjudication Section were still under the Adjudication process and civil proceedings concerning the said parcels of land were barred by section 30 (1) of the Land Adjudication Act.**
- 2. The boundary between Plot No. 169 and 174 was pending resolution by the District Land Adjudication Officer, Trans-Mara.**
- 3. The court lacked jurisdiction to entertain the dispute.**

The said application was opposed by the respondent.

The learned trial magistrate referred to a letter by the District Land Adjudication Officer, Transmara, dated 7th December, 2005. The letter stated, *inter alia*, that the two parcels of land were indeed subject to an appeal to the Minister which had not been disposed of. He observed that the letter did not make reference to plot Nos. 176 and 179. He further held that it was not possible to tell whether the adjudication register for Ololchani adjudication section had been completed or not. He therefore held that oral evidence was

necessary to determine whether the adjudication register for that section had become final.

Section 30 (1) of the **Land Adjudication Act** states:

“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.”

Under the Land Adjudication Act, the adjudication process comes to an end upon determination of all appeals by the Minister in terms of **section 29** of the **Act**. It is therefore clear that as at the time when the aforesaid ruling was delivered, Ololchani adjudication process was still ongoing. That being the case, in the absence of any consent given by the District Adjudication Officer, the trial court was devoid of jurisdiction to entertain the respondent’s suit. The learned trial magistrate was clearly in error in holding that the court had jurisdiction to hear the matter.

Having come to the above conclusion, I need not consider the other issues that were raised in the appeal as that would be a mere academic exercise. Jurisdiction is everything in all proceedings and without it any order made by a court is a nullity.

I allow this appeal with costs to the appellant. The ruling dated 13th June 2006 is set aside and substituted with an order allowing the chamber summons dated 24th April 2006. Consequently, the respondent’s suit before the trial court is struck out.

DATED, SIGNED AND DELIVERED AT KISII THIS 23RD DAY OF MARCH, 2010

D. MUSINGA
JUDGE.
23/3/2010

Before D. Musinga, J.

Mobisa – cc

Mr. Ochwangi for the Appellant

N/A for the Respondent

Court: Judgment delivered in open court on 23rd March, 2010.

D. MUSINGA
JUDGE.