



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS**

Civil Case 105 of 2009

KIVINGA MULIPLAINITFF

VERSUS

1. KITUI DISTRICT LAND REGISTRAR

2. MONICA MWIKALIDEFENDANTS

R U L I N G

It is apparent that the suit land herein, **L. R. No. ITHUMULA/ IKANGA/943**, was the subject of adjudication proceedings under the **Land Adjudication Act, Cap 284** (hereinafter called the **Act**) between the Plaintiff and the 2nd Defendant's late husband. The husband died before the adjudication process was exhausted, and the 2nd Defendant replaced him in the proceedings.

At some point the 2nd Defendant appealed to the Minister under **section 29** of the Act. The Minister's decision was in her favour, and she was adjudged to be the one entitled to be registered as proprietor of the suit land. The Minister's decision was effectuated, and the 2nd Defendant was duly registered as proprietor of the land.

The Plaintiff had been registered proprietor of the land and obtained title, apparently while the process of adjudication was going on. Pursuant to the Minister's decision, his registration was cancelled in order to enable registration of the 2nd Defendant as proprietor.

After the 2nd Defendant was registered as the proprietor, the District Land Registrar, in exercise of his powers under **section 8** of the **Registered Land Act, Cap 300**, called upon the Plaintiff to surrender his title to the suit land for destruction. The Plaintiff then filed the present suit seeking orders to restrain the District Land Registrar (1st Defendant) and the 2nd Defendant from interfering with the suit land.

In her statement of defence dated 20th May 2009, the 2nd Defendant set out the history of the adjudication process referred to above. The Plaintiff did not file any reply to that defence.

The 2nd Defendant has now applied by **chamber summons dated 8th July, 2009** under Order 6, rule 13 (1) (b) & (d) of the **Civil Procedure Rules** (the **Rules**). The order sought is to strike out the plaint upon the grounds that the suit is *res*

judicata and otherwise an abuse of the process of the court. The history of adjudication already referred to is repeated in the supporting affidavit, but this time with documentation verifying the same annexed to the affidavit.

In response, the Plaintiff filed grounds of opposition dated 30th November, 2009 urging that the suit raises triable issues of law and that the Minister's decision was a mistrial and hence null and void. No replying affidavit was filed.

At the hearing of the application there was no appearance for the Plaintiff, notwithstanding that the hearing date had been given in court on 1st December, 2009 in the presence of counsels for both parties.

I have considered the submissions of the learned counsel for the 2nd Defendant. Section 29 of Cap 284 aforesaid provides as follows:-

“29. (1) Any person who is aggrieved by the determination of an objection under section 26 of this 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.

(2) The Minister shall cause copies of the order to be sent to the Director of Land Adjudication and to the Chief Land Registrar.

(3) When all the appeals have been determined, the Director of Land Adjudication shall-

- a. alter the duplicate adjudication register to conform with the determinations; and**
- b. certify on the duplicate adjudication register that it has become final in all respects, and send details of the alterations and a copy of the certificate to the Chief Land Registrar, who shall alter the adjudication register accordingly.**

(4) Notwithstanding the provisions of section 38(2) of the Interpretation and General Provisions Act or of any other written law, the Minister may delegate by notice in the Gazette, his powers to hear appeals and his duties and functions under this section to any public officer by name, or to the person for the time being holding any public office specified in such notice, and the determination, order and acts of any such public officer shall be deemed for all purposes to be that of the Minister.”

The Plaintiff was de-registered as proprietor of the suit land, and the 2nd Defendant registered as proprietor of the same land in his place, upon exhaustion of the adjudication process. The adjudication process rested with the decision of the Minister on appeal. The decision was final by dint of section 29 (1) of the Act. The Plaintiff did not challenge that decision by way of judicial review. The decision stands.

By the present suit, the Plaintiff is attempting to re-open matters that have been adjudicated upon and settled between him and the 2nd Defendant over the suit land. The suit is clearly *res judicata* and misconceived. It cannot be permitted to move forward.

In the circumstances, the chamber summons dated 8th July 2009 is allowed. The plaint herein is struck out and the

Plaintiff's suit dismissed with costs. It is so ordered.

DATED **THIS 15TH DAY OF MARCH**

H.P.G WAWERU
JUDGE