



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISII**  
**Civil Case 36 of 2007**

FRANCIS SIALO MEMANTIK.....PLAINTIFF/RESPONDENT

VERSUS

LEPORE OLE MORUI.....1<sup>ST</sup> DEFENDANT/APPLICANT  
SAMSON MORUI.....2<sup>ND</sup> DEFENDANT/APPLICANT  
PAUL MORUI .....3<sup>RD</sup> DEFENDANT/APPLICANT  
LAND REGISTRAR, TRANSMARA.....4<sup>TH</sup> DEFENDANT  
ATTORNEY GENERAL.....5<sup>TH</sup> DEFENDANT

**RULING**

The 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> defendants filed an application dated 14<sup>th</sup> July, 2008 seeking an order to strike out the plaint filed on 27<sup>th</sup> March, 2007. The suit is in respect of a parcel of land known as plot No. 149, Osinoni Adjudication Section, hereinafter referred to as “**the suit land.**” The plaintiff sought a declaration that he is the sole and absolute owner of the suit land. That is inspite of a decision by the minister vide Appeal No. 167 of 1998 that the suit land belongs to one Mathew L. Sinteria.

The application was made on several grounds, one of them being that since the suit is within an adjudication section, the plaintiff was obliged to obtain consent of the District Land Adjudication Officer before commencing the suit, pursuant to the provisions of **section 30 (1)** of the **Land Adjudication Act** but he did not do so.

The said provision of the law states as hereunder:

“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 the adjudication section has become final in all respects under section 29 (3) of this Act.”

When does an adjudication register become final in all respects? It is when all the appeals emanating from a given adjudication section have been determined and the Director of Land Adjudication has altered the duplicate adjudication

register to conform with the determinations and certified on the duplicate register that it has become final. He then sends details of the alterations and a copy of the certificate to the Chief Land Registrar.

In this matter, there is no evidence that as at the time the suit was commenced the adjudication register had become final. Consent of the area adjudication officer was therefore required. Was the consent obtained? The plaintiff's response to that vital question is contained in paragraph 3 of his replying affidavit which is as hereunder:

“3. That I know of my own knowledge that before the institution of the suit I sought for consent from the District Land Adjudication Officer, Trans mara District. Attached herein is a copy of the said letter for application marked as FSM-01.”

The said annexure is merely a copy of a letter dated 27<sup>th</sup> December, 2006 seeking consent to institute the suit. The same does not suffice as the consent referred to under **section 30 (1)** of the **Act**. That provision of the law states that the consent must be in writing. Even if the plaintiff averred that after writing to the adjudication officer a verbal consent was given (which is not the case) that will still be unacceptable.

I am satisfied that the plaintiff failed to comply with a mandatory provision of the law. That renders the suit a non-starter. The plaintiff lacked capacity to institute it and the court equally lacks jurisdiction to entertain it. The suit is struck out with costs to the defendants.

Having come to that conclusion, I do not need to consider the other issues that were raised in the application. Without jurisdiction, it would be futile and a waste of judicial time to engage in any further proceedings.

DATED, SIGNED AND DELIVERED AT KISII THIS 22<sup>ND</sup> DAY OF JUNE, 2010.

**D. MUSINGA**  
**JUDGE.**  
**22/6/2010**

Before D. Musinga, J.

Mobisa – cc

Mr. Nyambati for the Plaintiff

Mr. Oguttu for the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Defendants

**COURT:** Ruling delivered in open court on 22<sup>nd</sup> June, 2010.

**D. MUSINGA**  
**JUDGE.**