



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

**Civil Suit 108 of 2010**

**RAINBOW INVESTMENTS LIMITED.....PLAINTIFF**

**VERSUS**

**ANN MBATIA.....DEFENDANT**

**RULING**

This is an application by the defendant, **Ann Mbatia**, seeking one order, apart from costs, namely, that this suit be stayed on the main ground that the suit property is land within an Adjudication Section. The application has been brought under the provisions of sections 5 and 30 of the Land Adjudication Act, sections 3A and 63 (e) of the Civil Procedure Act and Order L Rule 1 of the Civil Procedure Rules. The application is supported by an affidavit sworn by the defendant's advocate **Cecilia Mango**. It is deponed in the said affidavit, *inter alia*, that after investigation, counsel has discovered that the suit property is now under the process of adjudication and this court cannot entertain these proceedings which relate to an interest in the suit property. To the affidavit is annexed, *inter alia*, a Notice issued by the District Land Adjudication & Settlement Officer, Kilifi, declaring Kawala "B" an Adjudication Section. The application is opposed and there are grounds of opposition filed by the plaintiff's advocates. The gist of the opposition is that the suit property is already registered under the Registration of Titles Act and is therefore not subject to any adjudication process.

When the application came up for hearing on 17<sup>th</sup> June, 2010, counsel agreed to file written submissions which were duly in place by 30<sup>th</sup> July, 2010. The submissions merely restated the parties' stand-points taken in their affidavit and grounds of opposition respectively.

I have considered the application, the affidavit, the grounds of opposition and the submissions of counsel. I have further given due consideration to the authorities cited. Having done so, I take the following view of the matter. The notice issued by the District Adjudication & Settlement Officer on 9<sup>th</sup> April, 2010, refers to Kawala "B" Adjudication Section and reads in part as follows:-

**“All rights and interests in land within this Adjudication Section will be ascertained and recorded in accordance with the provisions of the Land Adjudication Act and any person claiming such rights or interest is required to present his claim to the recording Officer either in person or by duly authorized agents.**

**In accordance with section 30 of this Act with effect from the date of this notice, except with prior consent in writing to the Adjudication Officer, no person shall institute and no court shall entertain any civil proceedings whatsoever in which any right or interest inland within this**

**Adjudication Section is called in question until the Adjudication Register for this Adjudication Section has become final in all aspects under Section 29 of the Act.”**

Section 30 (1) of the Land Adjudication Act referred to in the notice reads as follows:-

**“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.”**

And section 29 (3) is in the following terms:-

**“29 (3) When all the appeals have been determined, the Director of Land Adjudication shall**  
**(a).....**  
**(b) certify on the duplicate adjudication register that it has become final in all respects.....”**

The process of adjudication therefore precedes registration under any of the registration regimes under our Law. As the Act itself suggests, the purpose of adjudication is to ascertain and record all rights and interests in the Land under adjudication. After ascertaining and recording the rights and interests, registration follows. With respect to the suit property, title number CRN 146 has been issued under the Registration of Titles Act. The Land has been allocated L.R. Number 22525 and comprises 3.780 hectares or thereabouts. The registered proprietor is now the plaintiff having had it transferred to it from the original grantee, Abdalla Ali Taib. The suit property has therefore been ascertained. A Certificate of Postal Search carried out on 14<sup>th</sup> April, 2010, indicates that as at the said date the plaintiff was the registered proprietor. That registration has not been cancelled. There is no evidence to that effect any way. That being the position, the suit property cannot be the subject of any adjudication process under the Land Adjudication Act and the Notice issued by the Kilifi District Land Adjudication and Settlement Officer on 9<sup>th</sup> April, 2010, could not and does not refer to the suit property.

With all due respect to counsel for the defendant, all the authorities cited considered land to which the Land Adjudication Act applied unlike in this case.

The defendant's application lodged on 18<sup>th</sup> April, 2010 has no merit and is dismissed with costs.

It is so ordered.

**DATED AND DELIVERED AT MOMBASA THIS 20<sup>TH</sup> DAY OF SEPTEMBER 2010.**

**F. AZANGALALA**

**JUDGE**

Read in the presence of:-

Ms. Mango for the Defendant/Applicant and Mr. Mushelle holding brief for Mr. Okanga for the Plaintiff/Respondent.

**F. AZANGALALA**

**JUDGE**

**20<sup>TH</sup> SEPTEMBER 2010**

