



Ekisa ((Suing as the Legal Administrator of the Estate of SANTRINO MADOLA (the Administrator of Estate of SABASTIANO EKISA NGEGE) v Ekapoloni and Barasa (sued as representatives of the Estate of Barasa Ekapalon Auku) & 3 others; Benjamin Pamba Ekisa & 3 others (Interested Parties) (Environment & Land Case 187 of 2017) [2022] KEELC 12795 (KLR) (28 September 2022) (Ruling)

Neutral citation: [2022] KEELC 12795 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE 187 OF 2017
AA OMOLLO, J
SEPTEMBER 28, 2022**

BETWEEN

**JOSEPHAT OBARASA EKISA PLAINTIFF
(SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF SANTRINO
MADOLA (THE ADMINISTRATOR OF ESTATE OF SABASTIANO EKISA
NGEGE**

AND

**GEORGE OSIDE EKAPOLONI AND SIMONA MUKHONE BARASA (SUED
AS REPRESENTATIVES OF THE ESTATE OF BARASA EKAPOLON
AUKU 1ST DEFENDANT
OSIKUKU BARASA EKAPOLON 2ND DEFENDANT
GEORGE OSIDE EKAPOLONI AND SIMONA MUKHONE BARASA (SUED
AS REPRESENTATIVES OF THE ESTATE OF MAXIMINUS EMODO
BARASA 3RD DEFENDANT
GRIPAS ISOKAA BARASA 4TH DEFENDANT**

AND

**BENJAMIN PAMBA EKISA INTERESTED PARTY
BENARD EKISA INTERESTED PARTY
JACKLINE SANTRINO INTERESTED PARTY
EVERLYNE JOSEPHAT INTERESTED PARTY**



RULING

1. The defendants filed a preliminary objection dated January 20, 2022 which raised points of law on the following grounds;
 - a. That in the context of sections 26, 29 and 30 of the [Land Adjudication Act](#) cap 284 Laws of Kenya, the plaintiff's cause of action in the suit instant is time barred.
 - b. That in the context of section 26, 29 and 30 of the [Land Adjudication Act](#) cap 284 Laws of Kenya, the court instant lacks jurisdiction to preside over the issues raised by the plaintiff's suit.
2. The parties agreed to dispense with the hearing of the preliminary objection by way of written submissions. The defendants filed their written submissions on June 14, 2022 and said that the plaintiff's averments as contained in the further amended plaint challenged the process of land adjudication and the subsequent registration of LR South Teso/Angoromo/705 to the 1st defendant thus bringing the whole range of issues to be determined by the court within the purview of the [Land Adjudication Act](#). The defendants submitted that in respect of the adjudication register, there was an objection filed which was determined and a ruling made that confirmed LR 705 belonged to the 1st defendant. They said that the 1st defendant was found by a legitimate body established within the [Land Adjudication Act](#) to be the legitimate owner of the suit land which finding was not challenged within the framework of the provisions of section 29 (3) of the [Land Adjudication Act](#) and the timelines set under the Adjudication Act long lapsed.
3. They submitted that no evidence has been tendered by the plaintiff of the disobedience by the 1st defendant or officer charged with the responsibility to resolve the objections and disputes filed in respect of LR South Teso/Angoromo/705 of orders issued and only such evidence could have formed the basis of upsetting the status quo in terms of the 1st defendant being the registered owner of LR No 705. They submitted that courts have interpreted section 30 of the Adjudication Act in a manner that suggests that courts cannot usurp the powers and functions of an adjudication officer.
4. They placed reliance on the following authorities; [Kinyamal Ole Tare v Sotua Sakana Muyia](#) (2015) eKLR, S Okong'o J, held as follows;

“This court has no jurisdiction in these proceedings to interfere with or impeach the defendant's title to the suit property on account of any error that was committed during the land adjudication process. A party with such grievance has to follow the dispute resolution mechanism set out in the Land Adjudication Act that I have outlined above.”

Tobias Achola Osindi & 13 others v Cyprian Otieno Ogola & 6 others (2013) eKLR. S Okongo J took the position that the court cannot usurp the powers and functions of the land adjudication officer or other bodies set under the Act to assist in the process of ascertainment of the said rights and interests in land. Due to the foregoing, a consent issued by the land adjudication officer under section 30 of the Act does not entitle any party who has an interest in land within an adjudication area to bring up court for determination issues which should be determined by the adjudication officer or through the dispute resolution machinery laid out in the Act.

5. The plaintiff filed his written submissions on June 24, 2022 and said that the preliminary objection is opposed through the defence that article 162 (2) (b) of the [Constitution](#) of Kenya 2010, section 80 (1)



of the [Land Registration Act](#) and section 13 (1) of the [Environment and Land Court Act](#) clothes this court with wide jurisdiction to deal with the pending and or unresolved land disputes in the republic of Kenya. He said that the suit property, LR South Teso/Angoromo/705, belonged to Sebastiano Ngege Barasa who was registered as the original proprietor at the time of land adjudication but his neighbour Barasa Kapolon who was an agent in the land adjudication office without the original owner's knowledge fraudulently or through corrupt scheme caused the cancellation of the original owner's registration by deleting his name in the register despite that the plaintiff together with all his family have occupied the suit property to date.

6. He said that his claim against the defendants is captured under paragraph 4 of the amended plaint which is for an order of cancellation of title of LR No South Teso/Angoromo/705 as a result of fraud which was discovered much later after the suit property's adjudication. It was the plaintiff's submission that this honourable court finds that it has unfettered original jurisdiction to entertain this matter which is *sui generis* and highly contentious and the same court also exercises appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matter falling within the jurisdiction of the court. He prayed that the preliminary objection is dismissed with costs.
7. Having looked at the preliminary objection and the rival submissions, I opine the issue that come up for determination by this court is whether it has jurisdiction to hear the suit before it. It is settled in law in the case of *Mukisa Biscuits Co Limited v West End Distributors Ltd* (1969) EA 696 that a preliminary objection qualifies as one if it does not require proof to ascertain it by way of calling additional evidence. In the defendant's submissions, they have gone at length to discuss the meaning and import of the copy of the adjudication register annexed to the list of documents filed by the plaintiff. The case has not been heard on merits and this court is being invited to analyse a document which in essence makes this preliminary objection to not being a pure point of law
8. The gist of the preliminary objection is that this court lacks the jurisdiction to determine the suit before it as it is time barred and it does not conform with section 26, 29 and 30 of the [Land Adjudication Act](#). There is no doubt that the suit land South Teso/Angoromo/705 is already an adjudicated land. The defendants have stated that the 1st defendant was found to be the owner of LR South Teso/Angoromo/705 after an objection was raised and a ruling delivered. They said that the timelines set under the Adjudication Act had longed lapsed. Section 29 and 30 of the [Land Adjudication Act](#) cited by the defendants provides as follows;

section 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 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.”

9. Section 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. [Rev 2012] Land Adjudication cap 284 L5 - 17 [issue 1].

- (2) Where any such proceedings were begun before the publication of the notice under section 5 of this Act, they shall be discontinued, unless the adjudication officer, having regard to the stage which the proceedings have reached, otherwise directs.
- (3) Any person who is aggrieved by the refusal of the adjudication officer to give consent or make a direction under subsection (1) or (2) of this section may, within twenty-eight days after the refusal, appeal in writing to the Minister whose decision shall be final.”

10. This court is of the considered opinion and I so hold that once the area was fully adjudicated and the titles issued, the provisions of the *Land Adjudication Act* were ousted. The sections referred to by the defendants does apply only in instances where the adjudication process is still on-going. A reading of the provisions of section 30 refers to a bar to institution of suits where the adjudication process is on-going. The current claim is challenging the title which is alleged to have been obtained by fraud during the adjudication process. It is the task of the plaintiff to prove that there was fraud with the matters raised in the defendants’ submissions as defences to such an allegation. The decision of *Tobias Achola Osindi* supra cited by the defendants in support of the preliminary objection was reached after hearing the parties on merits. The second decision of *Kinyamal Ole Tare* supra the applicant pleaded thus, “he is the absolute registered proprietor by way of first registration of all that parcel of land known as LR No 873 Nkararo adjudication section (“the suit property”) which ownership was acquired pursuant to a full adjudication and demarcation process within Nkararo adjudication section which is still in progress”. The adjudication was still in progress thus distinguishing it from the present case.

11. Consequently, this court finds that the preliminary objection as raised is not a pure point of law and secondly, the sections cited do not exclude the jurisdiction of the court in the circumstance of this case where adjudication was already concluded and titles issued. For these twin reasons, the objection is found without merit and is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT BUSIA THIS 28TH DAY OF SEPT. 2022.

A. OMOLLO

JUDGE

