



REPUBLIC OF KENYA



KENYA LAW
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**Nyagah v Nzuki & another (Environment and Land Appeal 26 of 2021)
[2022] KEELC 13356 (KLR) (28 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 13356 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITUI
ENVIRONMENT AND LAND APPEAL 26 OF 2021
LG KIMANI, J
SEPTEMBER 28, 2022**

BETWEEN

JOHN MATERE NYAGAH APPELLANT

AND

NGULI NZUKI 1ST RESPONDENT

KAKUSU MUSEMBI 2ND RESPONDENT

*(Being an Appeal from the Judgment of Hon. John Aringo (SRM) delivered on 26.05.2021 in
Kysuo PMELC No.E003 of 2020-John Matere Nyagah-vs Nguli Nzuki & Kakusu Musembi)*

RULING

1. Before the court is a chamber summons application dated March 3, 2022 seeking the following orders:
 1. Spent
 2. That there be a stay of all adjudication proceedings regarding the suit land in dispute herein pending the final determination of this suit.
 3. That the costs of this application be provided for..
2. The grounds are that adjudication proceedings regarding the suit land in dispute are about to begin and they have already been given notice of the same by the area chief and that since this matter is at an advanced stage before the court, it is in the interests of justice that there be a stay of the adjudication proceedings to avoid two different outcomes.
3. The appellant/applicant has filed a supporting affidavit stating that his area chief made a public announcement that adjudication proceedings were set to begin soon thereafter in their area and that if any of them had a court matter involving the affected land, they should get a court order to stay adjudication proceedings in their lands.



4. The applicant avers that his appeal is at an advanced stage of being determined and therefore it is in the best interests of justice that he be granted a stay of adjudication proceedings pending the final outcome of this appeal and that no injustice will be occasioned to the respondents herein.
5. This is a matter where both parties appear in person. This appeal arose from the judgment of Hon John Aringo(SRM) delivered on May 26, 2021 in Kyuso PMELC No E003 of 2020 where the appellant was the plaintiff and claimed that the defendants trespassed upon his property and started planting their crops on his land armed with bows and arrows.
6. The appellant therefore sought for a permanent injunction restraining the defendants from interfering with the unsurveyed land situated at Ituguru Village, Kamaindi Sub-location, Kanthungu location property belonging to him. The defendants denied this and stated that each of the parties had their own parcels of land. The trial court found that the evidence tendered fell short of the requisite standard of proof and dismissed the suit with costs to the defendants. Aggrieved by the judgment of the trial court, the appellant/applicant filed a memorandum of appeal dated June 25, 2021 and the subsequent application herein.

The Respondents' Case

7. The respondents filed a replying affidavit in opposition to the plaintiff's application on the April 4, 2022 stating that the applicant is afraid of adjudication proceedings being commenced against him because the truth of this matter will come out.
8. The respondents aver that the applicant had already been ordered by the court to allow survey to be done but never co-operated. In their view, the applicant doesn't have any justifiable grounds to seek the stay of the adjudication proceedings and that they will not infringe the applicant's rights in any way. They state that instead, it is the appellant's appeal that should be stayed because the adjudication proceedings will settle the dispute at hand once and for all.

Analysis and Determination

9. The application at hand is one that seeks stay of adjudication proceedings regarding the suit land which is an unsurveyed parcel of land situated at Ituguru Village, Kamaindi Sub-location, Kanthungu location. It is noted that the appellant/applicant has not attached a copy of the gazette notice or any other proof indicating that the land is in a section that has been declared an adjudication area. However, the respondent confirms that the suit land lies within an adjudication area.
10. Section 30(1) and (2) of the [Land Adjudication Act](#) Cap 284 provides as follows:
 - 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.
 - 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."
11. According to the law, therefore, this court must discontinue proceedings unless the adjudication officer otherwise directs. The appeal cannot continue without the consent of the adjudication officer. If the



adjudication officer gives direction and refuses to grant consent and the applicant is aggrieved, then last recourse is contained in section 30(3) which provides that:

“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.”

12. In the case of *Peter Kabete M'nkanyauga v Jacob Mutegi Mwatih* [2017] eKLR the court quoted itself thus:

“As determined in Meru ELC No 198 of 2016, eKLR, M'ithana M'thiringa v Murithi M'amburubua, this court has no jurisdiction to usurp the powers of institutions created by the *Land Adjudication Act* and the *Land Consolidation Act*, which are creatures of the legislature. As this court opined in the above cited case;

“If the court attempts to do so, this would render the concerned institutions superfluous and as dead as dodos. This can never be the intention of the law..... I find that this court has no jurisdiction to handle matters concerning unadjudicated land unless when dealing with questions concerning the integrity of the adjudication process.”

13. Interfering with the adjudication process amounts to usurping the powers of the institutions given the powers to deal with land adjudication and this court does not have jurisdiction to determine. In the words of the famous case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

14. Without this consent, the proceedings of this court will be rendered null and void. The Court of Appeal in *Bhaijee & another v Nondi & another* (Civil Appeal 139 of 2019) [2022] KECA 119 (KLR) (February 18, 2022) (Judgment) found as follows with regards to a suit that was instituted before the issuance of a letter of consent from the adjudication officer:

“The suit by the respondents was however instituted by a plaint lodged with the High Court on April 8, 2010, before the consent in the letter dated August 12, 2010 was granted. Therefore, at the time of inception of the suit, no consent had been granted by an adjudication officer, and the trial court erred in finding that such consent existed.

The lack of consent rendered the suit and the entire proceedings a nullity. Under section 30(4) of the *Land Adjudication Act*, the orders given in such proceedings were subject to any appeal process and determination. The orders given by the trial court were null and void *ab initio*.”

15. It is noted that the appellant/applicant and the respondent have admitted in their affidavits that the adjudication process has been commenced and is ongoing. I do find that this court cannot order stay of the pending adjudication proceedings as it lacks the jurisdiction to do so. I therefore find that the application dated March 3, 2022 lacks merit.

16. I further find that as provided under section 30 (2) of the *Land Adjudication Act* proceedings that were begun before the publication of the notice under section 5 of the *Land Adjudication Act*, are required



to be discontinued unless the adjudication officer, having regard to the stage which the proceedings have reached, otherwise directs. I therefore make the following orders:-

- 1) The application dated March 3, 2022 lacks merit and the same is hereby dismissed with costs to the respondent
- 2) The appeal herein be and is hereby stayed pending the directions and consent of the Land Adjudication Officer
- 3) The appellant is directed to seek the consent of the Land Adjudication Officer to continue with this appeal as provided under section 30 (2) of the *Land Adjudication Act* and the said consent, if any, to be filed in court within the next 60 days from the date hereof.
- 4) This appeal will be mentioned for further directions on November 30, 2022.

DELIVERED, DATED AND SIGNED AT KITUI THIS 28TH DAY OF SEPTEMBER 2022

HON. L. G. KIMANI

ENVIRONMENT AND LAND COURT JUDGE

Ruling read in open court in the presence of-

Musyoki Court Assistant

John Matere - the Applicant

Nguli Nzuki - Respondent

Kakusu Musembi - Respondent

