



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

Civil Case 9 of 2007

STANLEY LEZEN MLIWA ::::::::::::::::::::::: PLAINTIFF

VERSUS

LEONARD KAPALA MAKANGALU

DORCAS MAKANGALU

JEZEREAL NYANGE ::::::::::::::::::::::: DEFENDANTS

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**RULING**

Section 30(1) of the Land Adjudication Act Cap 284 of the Laws of Kenya is very clear:-

“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.”

It is not in dispute that the piece of land which is the subject of this suit is in an adjudication section although the adjudication section itself is not specified and there is pending before the Minister an appeal arising from a determination of the Land Committee in that section.

It is clear from what is placed before me that the adjudication officer’s consent as required by that section has not been obtained. The adjudication officer’s letter dated 16<sup>th</sup> October 2006 which Mr. Gichana for the Plaintiff claims is the required consent is clearly not one. That letter is addressed to the area chief asking him to prevail upon the parties to maintain the *status quo* pending the determination of the appeal pending before the Minister. It does not authorize any party to file a suit in court.

I do not accept Mr. Gichana’s argument that by dint of Section 60(1) of the Constitution I should ignore Section 30(1) of the Land Adjudication Act and entertain this suit. In my view the two sections are not in conflict. Section 30(1) of the Land Adjudication Act does not oust the courts jurisdiction. All it does is to stop parties from rushing to court on any and every disagreement in the adjudication process until it is complete. If it were to be ignored, I do not think any adjudication process will be completed. Disagreements on even a minor issue like the boundary line will be taken to court and stall the adjudication process. That would be disastrous and definitely not in the public interest.

Besides this it is a common principle of our law that where the Constitution or an Act of Parliament makes provision for the resolution of any grievance that provision should not be circumvented. See **Speaker of National Assembly –Vs- Karume [1990-94] EA 549, Kipkalia Kones –Vs- The Electoral Commission of Kenya & others, Civil Appeal No. 94 of 2005 (CA) and Narok County Council –Vs- Trans Mara County Council and Another, Civil Appeal No. 25 of 2000 (CA).**

For these reasons this suit is incompetent and is hereby struck out.

As the point upon which this suit has been struck out was not taken by the Defendant in the replying affidavit I order that each party bears its own costs.

**DATED and delivered this 6<sup>th</sup> day of December 2007.**

D.K. MARAGA

JUDGE