



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
Civil Suit 50 of 2000

JUSTUS NTUITI.....PLAINTIFF

V E R S U S

MWIRICHIA KAUMBUTHU.....DEFENDANT

RULING OF COURT

This matter is a Preliminary Point of Law raised by the defendant. It states that the jurisdiction of this court is ousted by S. 29 of the Land Adjudication Act, Cap 284 of the Laws of Kenya. That the dispute in this case was conclusively adjudicated upon by a tribunal constituted under the said Act and that denies this court the jurisdiction.

The facts of the case concern parcels of land known as Kangeta-Nyambene Land Adjudication Section Nos. 1661, 1736, 3961 and 3047. The amount of land in dispute amounts to 6.02 acres. It would appear that the land adjudication process in the said area took place from the year 1967 and continued beyond 1996. During the period the defendant was a member of the Land Adjudication Committee which gathered and initially adjudicated the land. The alleged facts would further indicate that the defendant was aggrieved by the committee's result in relation to the said pieces of land. He then, as he was entitled, objected against the Committee's decision to the Land Adjudication Officer under the provision of section 26 of the Act. The Land Adjudication Officer heard and determined the objection on 1/2/1994. The applicant could at this stage have filed an appeal within sixty days to the Minister but did not do so. The material before me show that the plaintiff did nothing until the sixty days were over and indeed until more than a year afterwards on 22/9/1995 and on 27/6/1996. He then obtained two letters of consent dated the above dates, called "consent of Adjudication Officer to Hearing of Land Suits", granting him leave to pursue the dispute above mention in the ordinary courts of law. The two "consents" related to parcels Nos. 1661, 1736, 1140, 3047 and 3961 earlier mentioned.

On 27/9/1996, the plaintiff filed this suit claiming the pieces of land aforementioned whose acreage amounted to 6.02 acres. He in the said claim averred that he had filed the suit by the authority of the Land Adjudication Officer contained in the Letters of Consent aforementioned.

The defence filed by the defendant/respondent inter alia averred "the plaintiff is improperly before the court and the defendant shall raise a preliminary point of law regarding jurisdiction."

He however, denied the claim as contained in the plaint. About three months later he filed this "Notice of Preliminary Point of Law" in which he claims that this court has no jurisdiction to hear and determine the ownership of the aforementioned pieces of land because it had been conclusively determined by a properly instituted tribunal which alone had jurisdiction to do so under S26 of the Land Adjudication Act and without an appeal to the Minister under S. 29 of the same Act. I must quote the relevant sections for easy reference:-

"s. 26(1) Any person named in or affected by the adjudication register who considers it to be incorrect or

incomplete in any respect may, within sixty days of the date upon which the notice of completion of adjudication register is published, object to the adjudication officer.....

(2) The adjudication officer shall consider any objection made to him.....and.....he shall determine the objection.”

“s.27 (1).....

(2).....

(3) When all objections have been determined and the time for appeal under S. 29 of this Act has expired, the Adjudication Officer shall send the adjudication register to the Director of Land Adjudication.....and the Director shall

(a).....

(b).....

(c) Forward the adjudication register to the Chief Land Registrar together with the list of Appeals.”

“S. 28.....

.....

Provided that, where the land is affected by an appeal under section 29 of this Act, a restriction shall be made and registered in respect of that land expressed to endure until the determination of the appeal.....”

s.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 to the minister.....

(a).....

(b).....

and the Minister shall determine the appeal.....

(2).....

(3).....

It would appear that the plaintiff chose to dispute the finding of the Land Adjudication Committee and he properly appealed to the Land Adjudication Officer under section 26 of the Act. If he became aggrieved of the Land Adjudication Officers decision, he had a right to appeal to the minister within sixty days. Does the section give the aggrieved party any alternative course? Mr. Isaboke argued that it was not mandatory for the plaintiff to appeal to the Minister as per the provision of Section 29 of the Act. He argued that the section has not used the word “shall” but has used “may”. I agree with him about the word used in the section. But clearly the word “May” used in the section is related only as to whether the party aggrieved wishes or not to appeal. Stated differently the party aggrieved may decide to appeal but he would not be forced to do so. In my understanding and therefore, my finding, a party who is aggrieved by the decision of the Land Adjudication Officer and wishes to do something about it has got only one way to go about it: to appeal in the manner provided under S.29 of the Act. If he does not appeal under section 29 aforementioned, in my opinion and finding, the decision of the Land Adjudication Officer is sealed unless there are any other specific provisions of the law coming to his aid. Mr. Isaboke was aware of this position. That is why he in my view decided to approach the court under Section 30 of the said Act. We will first quote section 30 aforesaid:-

“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.

(2).....

(3).....

The proceedings before us were begun when the adjudication process was already very advanced. Section 30(2) is not relevant. Nor is section 30(3) since the consent sought by the plaintiff was not refused. Thus only section 30(1) quoted above concerns the court on the issue before it.

The way I understand it is that no person shall institute a civil case in court and no court shall entertain a case with an interest in a piece of land in a section which has been declared an adjudication section under section 5 of the Act except with the consent of the Adjudication Officer or until the adjudication record register has been declared finalized as per the provisions of section 29 of the Act. As I understand it the records are declared finalized when the Director of Land Adjudication has received the Adjudication register that it has become final. That is when any appeals to Minister have been determined and rectifications resultant there from have been incorporated in the register received from the Land Adjudication Officer earlier. Copy of which was at the same time sent to the Chief Land Registrar.

My interpretation of section 29 of the said Act therefore, is that until the register is declared final by the Director of Lands Adjudication after any appeals have been determined and results noted on the register by him, no person shall institute a civil case with an interest in land in court, and no court shall entertain such case, without the consent in writing if the Land Adjudication Officer presiding over the adjudication section in question.

In this case the land Adjudication Officer issued the plaintiff with a consent to pursue the dispute in the court of law in between September 1995 and June 1996. There is no evidence before me that at the time the adjudication process was not going on. In deed if there is was any indication on that point, it was that his decision was on 1/2/1994 and a year or so later the process by the Minister entertaining appeals were still going on. Further more every certificate purporting to be signed by an adjudication officer shall be presumed to be what it shows unless the contrary is proved {(S.30(6))}. The consent letter in writing was signed by the adjudication officer. The respondent did not challenge its authenticity. I hold therefore that it was legally authored and gave the consent to file the interest in a court of law during the process of adjudication in accordance with the provisions of S.30(1) of the Land Adjudication Act. This means that although the plaintiff did not appeal to the Minister as expected under section 29(1), his rights were not to be extinguished if he got consent to come to the courts of law which will determine them.

The final conclusion then is that had the plaintiff failed to appeal to the Minister as he did against the decision of the Land Adjudication Officer and had he as well failed to get the consent of the said officer to file the matter in the courts of law, then in my view the decision of the Land Adjudication Officer, would have been final and probably unchallengeable except as may be otherwise provided by any other legal provision.

For the above reasons, I find that this suit is properly in court and that the court’s jurisdiction was not ousted under section 30 of the Land Adjudication Act. This application must therefore, fail. It is dismissed with costs to the respondent/plaintiff in any event. Orders accordingly.

Dated and delivered at Meru this 29th of September 2004

D.A. ONYANCHA

JUDGE