



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

CONSTITUTION PETITION NO. 19 OF 2019

CHARLES MUGAMBI MWITARI & 32 OTHERS..... PETITIONERS

VERSUS

DERMACATION OFFICER, NGAREMARA/GAMBELA

ADJUDICATION SECTION.....1ST RESPONDENT

TIGANIA EAST SUB-COUNTY LAND AND

ADJUDICATION AND SETTLEMENT OFFICER.....2ND RESPONDENT

THE HON. ATTORNEY GENERAL3RD RESPONDENT

JUDGMENT

1. The petitioners filed this suit claiming that their constitutional rights guaranteed under Articles 27 and 40 of the Constitution were violated by the 1st and 2nd respondents by breaching their statutory duties and denying the petitioners the right to own land. In particular the petitioner contends that:-

- a) *The 1st and 2nd respondents refused to demarcate the subject land in favor of the petitioners, who had gathered the same and had gone to the ground to ascertain its extent/boundaries and took measurements.*
- b) *The 1st and 2nd respondents failed to record the petitioners as the owners of the land.*
- c) *The 1st and 2nd respondents, declined to issue parcel numbers to the petitioners in respect to the subject land.*
- d) *The 1st and 2nd respondents intend to allocate other people the subject land.*

2. The petitioners further contend that the 1st and 2nd respondents reneged on, abdicated and breached their statutory duty to demarcate the petitioners parcel, record and issue parcel numbers to them as the owners of the same and have further discriminated against them and violated their right to acquire and own land. For the foregoing reasons, the petitioners seek the following reliefs:-

- a) *A declaration that the refusal of the 1st and 2nd respondents to demarcate, record and issue parcel numbers to the petitioners in respect to the subject land measuring about 500 acres, gathered by the petitioners at Lobua area, Turingwi Sub-location in Ngaremara Location within Ngaremara/Gambela Adjudication Section, yet the 1st and 2nd respondents visited the ground, took measurements using GPS and drew sketch maps for the same, is unreasonable, uncalled for, unjustified, illegal, discriminatory, unconstitutional, null and void and offends Articles 10 (1) (c), (2) (b), 27 (1), (2), (4)& (5) and 40 of the Constitution of Kenya.*
- b) *A Judicial review order of prohibition, prohibiting the 1st and 2nd respondents from issuing parcel numbers to any other person, body or entity apart from the petitioners, in respect of the subject land measuring about 500 acres, gathered by the petitioners at Lobua area, Turingwi Sub-location in Ngaremara Location within Ngaremara/ Gambela Adjudication Section, whose ground the 1st and 2nd respondents visited on 28/03/2019, in the presence of the petitioners and were shown boundaries/extent of the same took measurements using GPS and drew sketch maps in respect of the same;*
- c) *A Judicial review order of mandamus, compelling the 1st and 2nd respondents to demarcate, record and issue parcel numbers to the petitioners in respect to the subject land measuring about 500 acres, gathered by the petitioners at Lobua area, Turingwi Sub-location in Ngaremara Location within Ngaremara/Gambela Adjudication Section, whose ground the 1st and 2nd respondents*

visited on 28/03/2019, in the presence of the petitioners and were shown boundaries/extent of the same took measurements using GPS and drew sketch map in respect of the same;

d) Costs of the petition and interest thereon at court rate from the date of taxation till payment in full.

3. The petition is supported by the affidavit of **Charles Mugambi Mwitari, the 1st petitioner, on behalf of the other petitioners.**

4. In reply and opposition to the petition, a replying affidavit dated 9.10.2020 was filed. It is deponed inter-alia that the respondents cannot verify the ownership of the petitioners claim and the onus is on them to prove the same, they are also not aware of any developments on the land.

5. The respondents aver that they are aware the area is claimed and occupied by a different set of people. That indeed the respondents visited the land with a view of verifying the petitioners claims and upon arrival they were met by a hostile crowd of people who are currently residing and occupying the said land. That further upon perusal of their records, they found that the land had already been demarcated and claimed and they therefore refused to issue the petitioners with numbers as they had already issued the same to other people.

6. It was further deponed that there exists in this court other petitions being ELC petition 5 of 2019, ELC petition 10 of 2019 and ELC petition 11 of 2019 over the same adjudication section. That the petitioners ought to have followed the procedure set out in the Adjudication Act but they choose to ignore it and instead filed this suit.

Determination

7. I have considered all the arguments raised herein as well as the submissions of the parties. The question in my mind is whether this court has jurisdiction to determine the claim of the petitioners in view of the fact that the claim is based on ascertainment of rights and interests in land.

8. In the case of **Johnson Mbaabu Mburugu & another v Mathiu Nabea & 9 others [2020] eKLR**, I cited the Supreme Court of **Samuel Kamau & Another v. Kenya Commercial Bank and two others – Sup. Ct. Civil Application No. 2 of 2011** where it was stated as follows:

“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.”

9. It is clear from the pleadings that the petitioners are claiming ownership of the 500 acres of land in Lobua area in Turingwi sub-location in Ngaremara/Ngambella Adjudication section. It is also apparent that the process of adjudication is ongoing in the aforementioned area. I find that the two statutes which govern the adjudication process, that is the Land Adjudication Act and the Land Consolidation Act capture the steps of adjudication from the start when a declaration is made up to the time of finalization or close of the register of adjudication. The aforementioned statutes provide elaborate dispute resolution mechanisms which need to be followed in case of any grievance arising during the process of adjudication. See- **John Masiantet Saeni v Daniel Aramat Lolungiro & 3 others [2017] eKLR, Tobias Achola Osindi & 13 others v Cyprianus Otieno Ogalo & 6 others [2013] eKLR.**

10. The Land Adjudication Act (Cap 284 of the Laws of Kenya) applies to the circumstances of this case and provides an elaborate procedure that ought to be followed in the event of a dispute. Under Section 13 of the Act, every person who considers himself to have an interest in land within the adjudication section makes his claim to the recording officer and points his boundaries to the demarcation officer. If there are two or more conflicting claims to an interest in land as in the case herein, and the recording officer is unable to resolve the conflict, this dispute is submitted to an adjudication committee as provided under Section 19 of the Act. The adjudication Committee proceeds to hear the conflict and issues a decision. The dispute can be escalated to the Arbitration board under Section 22 of the Act, while Objection to the Adjudication Register cases can still be filed under Section 26 thereof.

11. I do opine that the petitioners have not utilized the statutory mechanisms provided for in the adjudication statutes. To this end, I make reference to the case of **Abdullah Mangi Mohamed v Lazarus Beja & 5 Others [2012]eKLR** where it was held that:

“...where there is a dispute as to the Applicant's entitlement to property and where there exists a statutory mechanism for the resolution of the dispute, that statutory procedure should be utilized in the determination of the Applicant's claim to the property rather than clog the Constitutional Court with applications for enforcement of purported rights which require prior determination. The improper practice of making all private disputes as to ownership of property as applications for the enforcement of the constitutional right to property should be discouraged.”

12. In light of the foregoing analysis, I find that this court lacks jurisdiction to entertain this suit, and as such the same is dismissed with each party bearing their own costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 17TH DAY OF MARCH, 2021

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this Judgment was given to the advocates for the parties through a virtual session via Microsoft teams on 25.1.2021. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this Judgment has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE