



REPUBLIC OF KENYA



**Muthare & 9 others v Land Adjudication and Settlement Officer Tigania East and West & another; Amuthumba/Ngaremara Pastoralists Community Based Organization (Through the Chairman Justus Mugaa Impwi ) (Interested Party) (Environment & Land Case 23 of 2018) [2023] KEELC 422 (KLR) (1 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 422 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 23 OF 2018**

**CK NZILI, J**

**FEBRUARY 1, 2023**

**BETWEEN**

**JOSEPH M’KUBANIA MUTHARE ..... 1<sup>ST</sup> PLAINTIFF  
JACOB MUTURITHIA M’IKIYU ..... 2<sup>ND</sup> PLAINTIFF  
DORCAS NKOYAI NKUBIRIA ..... 3<sup>RD</sup> PLAINTIFF  
AGATA N. ANDRAINO ..... 4<sup>TH</sup> PLAINTIFF  
JOYCE GACHERI GATOBU ..... 5<sup>TH</sup> PLAINTIFF  
LUCY NKATHA KIREMA ..... 6<sup>TH</sup> PLAINTIFF  
CHRISTINE KALULU ..... 7<sup>TH</sup> PLAINTIFF  
JEREMIAH KAILIKIA ..... 8<sup>TH</sup> PLAINTIFF  
JULIUS NGIRI ..... 9<sup>TH</sup> PLAINTIFF  
JOHANA GICHUNGE M’LARIA ..... 10<sup>TH</sup> PLAINTIFF**

**AND**

**LAND ADJUDICATION AND SETTLEMENT OFFICER TIGANIA EAST AND WEST ..... 1<sup>ST</sup> DEFENDANT  
MERU COUNTY GOVERNMENT ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**AMUTHUMBA/NGAREMARA PASTORALISTS COMMUNITY BASED ORGANIZATION (THROUGH THE CHAIRMAN JUSTUS MUGAA IMPWI ) ..... INTERESTED PARTY**



## RULING

1. By an application dated October 11, 2022 the court is asked to grant leave to join the proposed interested parties said to be land owners in Ngaremara/Ngambella (Amuthumba). Alongside this application, an issue was also been raised as to whether the court has jurisdiction to entertain the suit.
2. The application is accompanied by a supporting affidavit of Justus Mugaa Impwi, the chairman of the pastoralist's community-based organization. The reasons given are that the proposed interested parties' parcels of land have been demarcated and adjudicated the land; some of them were compensated for their land by the Kenya Airports Authority and are therefore gold diggers; the interested parties have a stake on the matter as held by this court in Petition No's 5 of 2019 and 100 of 2010; the mapping of the township was nullified by the court in the aforesaid petitions and none of the plaintiffs herein objected to the demarcation process and lastly, that the County Government wishes to convert the area as a township without following the law to the detriment of the proposed interested parties.
3. With leave of court parties agreed to canvass the issues through written submissions dated November 17, 2022, November 15, 2022 and November 15, 2022 for the plaintiffs, 1<sup>st</sup> defendant and interested parties respectively.
4. The plaintiffs submitted that the suit is properly before the court as per articles 22, 165 and 258 of the Constitution. Reliance is placed on Michael Osundwa Sakwa vs Chief Justice & President of the Supreme Court of Kenya and another (2016) eKLR and Mining Temoi & another vs Governor of County Government of Bungoma and 17 others. It is the plaintiffs' submission that they have owned the disputed plots before the adjudication process commenced, hence their suit is of a public interest.
5. For the 1<sup>st</sup> defendant, it was submitted that order 1 rule 10 (2) of the Civil Procedure Rules grants the court power to join parties such as the interested parties who have demonstrated a stake as per paragraphs 4 & 5 of the supporting affidavit sworn by Justus Mugaa Impwii.
6. On the question of jurisdiction, the 1<sup>st</sup> defendant submitted that based on their defence at paragraph 10, the suit offends section 30 of the Land Adjudication Act given that at paragraphs 8 & 9 of the plaint it was conceded that the land was under adjudication yet no consent to sue was sought and or obtained. Reliance was placed on Bhaijee & another vs Nondi & another (2022) KECA 119 KLR on the proposition that a suit filed without such a consent was a nullity.
7. Further the 1<sup>st</sup> defendant submitted that the suit offends section 16 (2) of the Government Proceedings Act since injunctive orders cannot issue against the government. Therefore, the 1<sup>st</sup> defendant urged the court to find the plaint dated June 7, 2018 and the entire suit defective in law, a non-starter and a proper candidate to be declared a nullity.
8. The interested parties took the view that the subject parcels of land falls under an adjudication section, which is at the stage of awaiting the issuance of title deeds. That any aggrieved party has a right under section 29 of the Land Adjudication Act and 26 of the Land Consolidation Act to invoke the available internal dispute mechanisms under the aforesaid Acts. Reliance was placed on Meru ELC No 167 of 2011 Nicholas Mugambi & others vs Zachary Baariu & others, Meru ELC Petition 21 of 2012, Stephen Michuki KIunga vs Nkuni M'Rchiu & 20 others, Kanampiu M'Rimberia vs Julius Kathawe & 3 others Meru HCC NO 6 of 2009, Samuel Kamau & another vs KCB Bank and 2 others, Speaker of National Assembly vs Karume (1992) KLR 425, Anne Wamuda & 3 others vs Kenya Railways Corporaiton & another (2015) eKLR, David Muliwali Kazungu Yaa vs NLC & 3 others, John Masiantet Saeni vs



*Daniel Aramat Lolungiro & 3 others* (2017) eKLR, *Mutanga Tea & Coffee Company Ltd vs Shikara Ltd & another* (2015) eKLR.

9. The interested parties therefore submitted that the court lacks jurisdiction since the land was under adjudication and that the dispute was falling under the statutory mechanism set under the relevant statutes. Reliance was placed on *Marbury vs Madison* 5 US (1 Cranch) 137 (1803) *Silverio Akubu & 4 others vs Charles Baariu Salasio & 3 others* Meru Petition No 29 of 2018, *Mohamed Abmend Khalid (Chairman) & 10 others vs Director* (2013) eKLR, *Justus Mugaa M'Impwi vs DLASO Tigania East & West & another* (2018) eKLR, *Geoffrey Muthinja Kabiru & 2 others vs Samuel Muga Henry & 1756 others* (2015) eKLR.
10. The primary pleadings in this suit are the plaint dated June 7, 2018, the 1<sup>st</sup> and 2<sup>nd</sup> defendants' defences dated January 27, 2021 and March 12, 2019 respectively. The plaintiff averred that they are the inhabitants of Turingwi trust land neighboring Isiolo International Airport who were relocated to Turingwi B Township to pave way for the airport expansion. It was averred that the 2<sup>nd</sup> defendant allocated to them both commercial and residential plots within the aforesaid townships and issued allotment letters. Further, the plaintiffs averred that they have extensively developed their plots while at the same time paying annual rates and rents to the 2<sup>nd</sup> defendant.
11. It was the plaintiffs' claim that in total disregard to the aforesaid ownership rights the 1<sup>st</sup> defendant unlawfully commenced an adjudication process over the townships and was now purporting to illegally convert an otherwise commercial plots into agricultural lands.
12. The plaintiffs therefore urged the court to restrain the defendants from interfering with their Turingwi "B" Township plots ownership rights. The plaint was accompanied by among other some provisional letters of allotment for Plot No RH 10, RH 97, RH 91, CI 46, RM 8 RH 88, RM 31, RM 10, RH 74, RH 91, rates payments receipts issued by the 2<sup>nd</sup> defendant and photographs showing developments thereto.
13. In its defence, the 1<sup>st</sup> defendant admitted that the expansion of Isiolo airport fell within the new Kiare Adjudication Section Tigania West subcounty and that those who were displaced were indeed compensated in monetary terms, among them the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants.
14. The 1<sup>st</sup> defendant averred that vide a notice dated March 11, 2016, the area was declared an adjudication section known as Ngaremara/Gambella Adjudication Section, Gambella location comprising of Turingwi "B" under the *Land Adjudication Act* (cap 284) where some of the plaintiffs owning land have been recorded and issued with parcel numbers. The 1<sup>st</sup> defendant averred that the suit was bad for lack of both a consent to sue and a notice under section 13A of the *Government Proceedings Act*.
15. The defence was accompanied by a witness statement of Earnest Langat, a demarcation officer of the adjudication section who admitted the existence of the planned Turingwi "B" Township and the allotment letters which were challenged in JR Misc Application No 100 of 2016 and 11 of 2011. The 1<sup>st</sup> defendant also filed a list of documents dated April 27, 2021 among them the notice dated March 11, 2016, a copy of the area map and an extract of the register.
16. Regarding the 2<sup>nd</sup> defendant its defence was that Turingwi B township would be registered under its name to be held in trust for the allottees of the plots who thereafter would be issued with leases for their plots hence no adjudication was likely to occur to the plaintiffs plots in view of the safeguard thereof.
17. The 2<sup>nd</sup> defendant filed a list of witnesses dated December 6, 2021 among them those of the chairman of the defunct County Council of Nyambene, the Director of Physical Planning stating that the 1<sup>st</sup>



- defendant ignored the request to exempt the boundaries of the airport and the township area as part of the adjudication area or set it apart or issue one title under its name in line with the planning laws.
18. Similarly, the 2<sup>nd</sup> defendant filed a list documents among them the county council minutes, physical planners report, planned maps and letters dated October 19, 2009 forwarding the coordinates to the 1<sup>st</sup> defendant. In the said documents there was attached a Gazette Notice No 9279 published on August 28, 2009 regarding DP No MN/2150, 09/10B Turingwi “B” for land situated within the then County Council of Nyambene in Tigania East and West Districts and an objection letter dated October 22, 2009 from the District commissioner, letter dated September 30, 2009 from the Ministry of Roads, letter dated October 24, 2009 from the survey office, and lastly a letter August 14, 2009 from the Ministry of Lands.
  19. Going by the facts as pleaded by the respective parties as set out above, there is no dispute that the subject plots fall under an area which has been declared an adjudication section by virtue of the notice dated March 16, 2016. What is in dispute is whether land already planned for a township by the 2<sup>nd</sup> defendant should be subjected to an adjudication process by the 1<sup>st</sup> defendant in total disregard to the rights of lawful allottees and planning programmes by the 2<sup>nd</sup> defendant issued while exercising its statutory mandate in the planning and the establishment of townships, urban areas and cities under the *Urban Areas and cities Act* as well as the *Physical Land Use and Planning Act*.
  20. The 2<sup>nd</sup> defendant has confirmed that the plaintiffs were lawful allottees to the suit lands prior to the publication of the notice dated March 16, 2016 by the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant averred that the 1<sup>st</sup> defendant ignored its request for issuance of one title in trust for the plaintiffs. On the other hand, and while acknowledging the planned town, the 1<sup>st</sup> defendant has said the allotments were done without due regard to the occupants of the land on the ground.
  21. The plaintiffs have approached this court claiming that the acts of the 1<sup>st</sup> defendant have infringed upon and threatened their right to own commercial plots.
  22. The question as to whether this court is properly seized with jurisdiction has to be answered in light of the pleaded facts. The 1<sup>st</sup> defendant took the view and submitted that a consent to sue was necessary before the suit was filed and hence has urged the court guided by Nordin Bhaijee & another (*supra*) to find it bereft of jurisdiction.
  23. The facts in the Nordin Bhaijee case (*supra*) are materially distinguishable from the facts in this suit. The consent to sue had been issued after the suit in the High Court had been filed. The said consent was also directed to a Resident Magistrate, Mariakani Law Courts as opposed to the High Court.
  24. In *Republic vs DLASO Transmara District Samson Kiserian Kileria* (2013) eKLR, the court was *inter alia* dealing with the powers of a land adjudication officer to determine a petition and an objection made with regard to an adjudication register under section (9), the conduct of proceedings under sections 10, 11 (b), section (12) of the *Land Adjudication Act* and lastly, on whether the adjudication process had been conducted or not under sections 23-30 of the *Act*. The court held that in absence of a satisfactory compliance with the set procedures under the Act, the appellant could not access the court by way of judicial review without complying with section 30 thereof.
  25. The *Land Adjudication Act* does not completely shut out the court from superintending the legality or the appropriateness of its manner of ascertaining and registering interests on land. Okongo J in *Tobias Ochola Osindi & 13 others vs Cyprianus Otieno Ogalo & others* (2013) eKLR held that the court’s role remains supervisory including the interpretation and a determination of any point or issue of law that may arise in the course of the adjudication process.



26. In *Stephen Kirimi M'rinturi vs DLASO Igembe Districts & others, Peter Kumbu Kimunya & others (interested party)* (2020) eKLR Mbugua L J held that the legal infrastructure in Kenya must also be read together as part of the same legal ecosystem.
27. In this suit, what the plaintiffs are questioning is whether the 1<sup>st</sup> defendant was in order to declare and adjudicate the Turigwi Township in total disregard of the role of the 2<sup>nd</sup> defendant in the planning and establishment of town plots which mandate is donated to it under articles 6, 40, 62, 66, 67, 174, 175, 176, 185, 186 of the *Constitution* and sub rule 8 of schedule IV thereof.
28. To my mind therefore, the issues raised in the plaint are properly before the court by dint of section 13 *Environment Land Court Act* as read together with article 165 (2)b) of the *Constitution* given that the internal mechanisms set under the *Land Adjudication Act* do not grant a land adjudication officer powers or the minister to interpret the constitutional and statutory conflict between the 1<sup>st</sup> & 2<sup>nd</sup> defendants regarding the adjudication of land falling in urban areas.
29. On the second issue of joinder of parties in *JSC vs Speaker National Assembly* (2014) eKLR the Court of Appeal cited with approval the *Mutunga Rules* which defined an interested party as one with identifiable stake or legal interest or duty on the proceedings before court. A party seeking to be enjoined to a suit must therefore demonstrate the interest or stake to the satisfaction of the court as held in *AG vs David Ndiu & 73 others* Petition No 12 (E016 of 2020) (2021) KESC 17 (KLR) November 9, 2021 (ruling).
30. The affidavit sworn by Justus Mugaa Impui has clearly set the interest or stake of the pastoralist's community in the subject area which has not been challenged by way of a rival affidavit by the plaintiffs. Similarly, the 1<sup>st</sup> defendant in its submissions before court has conceded the vital role the interested parties are likely to play should they be joined in the suit.
31. Given the foregoing I allow the application dated October 11, 2022 with no order as to costs.
32. Parties to comply with order 11 *Civil Procedure Rules* within 30 days from the date hereof.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT**

**THIS 1<sup>ST</sup> DAY OF FEBRUARY, 2023**

**In presence of:**

C/A: Kananu

Kieti for 1<sup>st</sup> defendant

Plaintiff

Mr. Muranya for Gichunge for plaintiff

**HON. C.K. NZILI**

**ELC JUDGE**

