



**Solomon v Isaac & 2 others (Environment and Land Appeal
94 of 2019) [2023] KEELC 568 (KLR) (8 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 568 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL 94 OF 2019**

CK YANO, J

FEBRUARY 8, 2023

BETWEEN

LOISE KAARI SOLOMON APPELLANT

AND

ALICE MUTHAKU ISAAC 1ST RESPONDENT

LAND ADJUDICATION AND SETTLEMENT OFFICER –

TIGANIA 2ND RESPONDENT

THE HON. THE ATTORNEY GENERAL 3RD RESPONDENT

JUDGMENT

1. The appellant was the plaintiff in Tigania PMCC no 14 of 2018 (formerly Meru ELC no 150 of 2014) while the respondents were the defendants. The appellant had sued the respondents vide a plaint dated September 29, 2014 seeking for a declaration that land parcel no 1145 Uringu II Adjudication Section is the property of the appellant, an order of return of the 2.87 acres of the plaintiff and an order that the 2nd respondent records be re-done to reflect the total original acreage of LR no 1145 Uringu II Adjudication section plus costs and interest.
2. The respondents denied the claim. The 1st respondent filed a statement of defence dated November 13, 2018 while the 2nd and 3rd respondents filed theirs dated October 14, 2014. In addition, the respondents filed notice of preliminary objections dated October 14, 2014 and November 13, 2018. The said preliminary objections were to the effect that the suit offended the provisions of section 30 (1) of the *Land Adjudication Act* cap 284 Laws of Kenya, that consent in the suit was irregularly/prematurely issued, that in view of the express provisions of section 29 of the *Land Adjudication Act* and section 26 (3) of the *Land Consolidation Act*, the court lacked jurisdiction to hear and determine the matter and that the suit amounted to a total abuse of the court process and the law.



3. The trial court heard and determined the said preliminary objection which essentially urged the court to have the appellant's suit struck out for falling foul of the said provisions of law. By a ruling delivered on January 17, 2019, the trial court (Hon Sogomo Principal Magistrate) upheld the said preliminary objection and found that the court was devoid of jurisdiction to entertain the suit and consequently struck out the appellant's suit with costs. It is the above ruling which has provoked this appeal.
4. In the Memorandum of Appeal dated July 15, 2019, the appellant has set out the following grounds of appeal:
 1. The learned trial magistrate erred in law and fact in that he misunderstood the law before him and did wrong interpretation and came to a wrong conclusion.
 2. The learned trial magistrate erred in law and fact in that he did not first of all find out which Act of Parliament applied to the land in question i.e land reference no Uringu II/1145 adjudication section between *Land Adjudication Act* cap 284 laws of Kenya and Consolidated Act Cap 283 Laws of Kenya leading himself to a wrong conclusion.
 3. The learned trial Magistrate erred in law in applying the wrong Act of Parliament to the matter before him and came to the wrong conclusion.
 4. The learned trial magistrate erred in law and fact in that he did not consider the consent given by Dlaso which in law authorized the court to hear and determined the matter.
 5. The learned trial magistrate erred in law of fact in finding that he had no jurisdiction to hear and determine the matter.
 6. The ruling/decision of the trial magistrate is bad in law and fact.
5. The appellant has now asked that the said decision of the learned magistrate be set aside and an order for a re-trial with costs.
6. The appeal was canvassed by way of written submissions but only the appellant filed her submissions dated September 28, 2020 through the firm of Maitai Rimita & Co Advocates. Counsel for the appellant submitted that at the time the trial court ordered that parties canvass the preliminary objections by way of written submissions, Uringu II Adjudication Section was under cap 283 Laws of Kenya and the same had already been registered, hence the *Land Registration Act* had come into play. It is submitted that since the registration was to bring the latter Act into play, the trial magistrate should have decided on the issue of registration first and that he was wrong not to have taken into account the fact that the land in question was now registered.
7. The appellant's counsel submitted that the learned trial magistrate should have known that the *Land Consolidation Act* and the *Land Adjudication Act* are two independent Acts of Parliament and do not apply at the same time or simultaneously to a given Adjudication area. Counsel for the appellant relied on the case of *Peter Kimandiu vs Land Adjudication Officer Tigania West and others*, Civil appeal no 28 of 2015 (Nyeri) and submitted that the learned trial magistrate mixed up the law and came to the wrong conclusion.
8. The appellant's counsel further submitted that the appellant had sought consent of the land adjudication officer before filing suit and referred to page 9 of the Record of Appeal and paragraph II of the plaint. That the learned trial magistrate did not at all discuss, consider or mention this consent. Counsel for the appellant relied on the case of *Rimbera Mwogera Miteleka vs Paul Kigea Nabea* [2014] eKLR, (Nyeri) Civil Appeal no 221 of 2010 *Stephen Kungutia & 2 others Vs Severia Nculubi, Douglas Karithi & another Vs Stanley Gatuma* [2019] eKLR.



9. It is the appellant's submissions that having obtained consent from the land adjudication officer, she was properly before the court and that the trial court was seized with the requisite jurisdiction to entertain the matter to its finality and determination. The appellant submitted that the ruling of the trial magistrate was not only deficient but was totally defective and hence invalid thereby leading to a miscarriage of justice, adding that ruling of the trial court was coloured with errors of commissions which negated its substance as it ran contrary to the clear provisions of the law and amounts to a miscarriage of justice.
10. The appellant submitted that the lower court's finding and conclusion was founded on wrong principles of fact and/or law and further that the trial court failed to consider the issues that were raised for determination by the appellant as required by the provisions of order 21 rule 4 of the Civil Procedure Rules, but instead glossed over the issue in dispute thereby arriving at a deficient ruling. That the decision made by the trial court and the resultant ruling prejudiced the appellant and that justice was not done to her. The appellant's submission is that the learned trial magistrate erred in not analyzing both the facts and the law and in finding that he had no jurisdiction to hear and determine the matter.

Analysis and determination

11. I have considered the matter alongside the submissions made. I have also perused the pleadings before the lower court in Tigania PMCC no 14 of 2018 (formerly Meru ELC no 150 of 2014) together with the preliminary objections raised by the respondents herein.
12. The issue I need to deal with is whether the trial magistrate had jurisdiction in the matter or not and whether or not he was justified in striking out the appellant's suit.
13. I need not emphasize the point that if a court has no jurisdiction, then it has no option other than to down its tools. The Supreme Court has had occasion to pronounce itself on the issue of jurisdiction in several cases.
14. In the case of Samuel Kamau Macharia & another Vs Kenya commercial Bank Ltd & 2 others [2012]eKLR, it was held that a court cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law, and that jurisdiction is not a mere technicality but goes to the very heart of the matter. In that case the court pronounced itself as follows:-

“A court's jurisdiction flow 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 itself jurisdiction exceeding that which is conferred upon it by the law. We agree with counsel for the first and second respondents in his submissions 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.”
15. In Owners of Motor Vessel "Lillian S" Vs Caltex Oil (Kenya) Ltd 1989 KLR 1 Nyarangi JA held:

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step”



16. I did mention that the respondents' preliminary objections was to the effect that the magistrate's court did not have jurisdiction to hear and determine the matter. The respondents argued that the appellant's suit offended the provisions of section 29 and 30 of the *Land Adjudication Act*.
17. In her plaint, the appellant pleaded in paragraphs 5,6 and 7 and 8 as follows;
 5. The deceased husband Solomon Nguura was at all material times the owner of land Parcel no 1145 Uringu II Adjudication Section.
 6. The said land parcel no 1145 Uringu Adjudication Section was gathered by the plaintiff's husband and there was no objection during his lifetime.
 7. On or about 8th September, 2021 the 1st and 2nd Defendants unlawfully and fraudulently colluded and had objection no 203 determined in favour of the 1st defendant by which 2.87 acres were excised from the plaintiff's land parcel no 1145 Uringu II Adjudication Section and awarded to the 1st defendant to the detriment of the plaintiff. ”
 8. The plaintiff maintains that the 2nd defendant's unlawful actions were tainted with fraud which fraud was facilitated and perpetrated by the 1st and 2nd defendant.”
18. The applicant then listed the alleged particulars of fraud against the 1st and 2nd respondents herein and prayed for judgment against the respondents for a declaration that the said parcel of land is the property of the appellant and an order for the return of the said 2.87 acres to the appellant as well as an order that the 2nd respondent's records be re-done to reflect the original acreage of the suit land.
19. Section 30 (1) of the *Land Adjudication Act* 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”.
20. Similarly, Section 8(1) of the *Land Consolidation Act* provides that;
 - “(1) subject to the provisions of this section, no person shall institute and no court whatever shall take cognizance of, or proceed with or continue to hear and determine, any proceedings in which the ownership or the existence under native law and custom of any right or interest whatsoever in, to or over any land in an adjudication area is called into question or is alleged to be in dispute unless the prior consent in writing of the adjudication Officer to the institution or continuance of such proceedings has been given.”
21. The provisions of the law under the two statutes is to the effect that no suit shall be instituted in an adjudication section without the consent of the land adjudication officer. I have perused the record of appeal and the original record before the subordinate court. The first document is a consent of the adjudication officer dated August 4, 2014 and filed alongside the plaint on October 1, 2014. There is no doubt therefore that the appellant had sought for and obtained consent of the adjudication officer before filing the suit. From the impugned ruling, it is clear to me that the learned trial magistrate did not address himself to the said consent and therefore failed to consider it in the ruling. With respect, there was no basis for the learned trial magistrate for arriving at the conclusion that the suit was filed



prematurely when the record is clear that there was consent from the district land adjudication officer, Tigania West/East District to the appellant to institute the suit.

22. In the upshot, I find that the learned magistrate erred in upholding the respondents' preliminary objections and striking out the appellant's suit.
23. Consequently, I find that the appeal is merited, and the same is allowed. The decision of the learned magistrate issued on January 17, 2019 striking out the appellant's suit is hereby set aside and the same is replaced with an order dismissing the respondents' preliminary objections dated October 14, 2014 and November 13, 2018.
24. The matter is referred back to the lower court for re-trial before a different magistrate.
25. The costs of the appeal are awarded to the appellant to be borne by the respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 8TH DAY OF FEBRUARY, 2023

In presence of

C a Kibagendi

Ms Rimita for appellant

No appearance for respondents

C K YANO

ELC JUDGE

