



**Kaugu & 246 others v Attorney General & 3 others; Mbiuki (Suing on behalf of 210 members of Ntarangwi Settlement Scheme Self Help Group ) (Interested Party) (Environment & Land Case 141 of 1992) [2023] KEELC 16183 (KLR) (8 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16183 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 141 OF 1992**

**CK NZILI, J  
MARCH 8, 2023**

**BETWEEN**

**RICHARD MUGO KAUGU & 246 OTHERS ..... PLAINTIFF**

**AND**

**ATTORNEY GENERAL ..... 1<sup>ST</sup> DEFENDANT**

**MINISTRY OF LAND HOUSING AND SETTLEMENT ..... 2<sup>ND</sup> DEFENDANT**

**MERU COUNTY GOVERNMENT ..... 3<sup>RD</sup> DEFENDANT**

**MERU COUNTY GOVERNOR ..... 4<sup>TH</sup> DEFENDANT**

**AND**

**CATHERINE MBIUKI (SUING ON BEHALF OF 210 MEMBERS OF NTARANGWI SETTLEMENT SCHEME SELF HELP GROUP) ..... INTERESTED PARTY**

**RULING**

1. The 1<sup>st</sup> defendant has through a notice of motion dated October 4, 2022 sought for:
  - a. A notice of substituted service be made to the affected public and for matters listed in prayer (d) below and all other suits affecting Ngaremara/Gambella Rikiau Adjudication Section to be fixed for hearing together before this court at a date to be issued.
  - b. A stay of these proceedings and all matters listed in prayer no d below pending the conclusion and determination of the land adjudication process at Ngaremara/Gambella Rikiau Adjudication Section till an adjudication register is issued.



- c. Leave to issue to amend the defense and a corresponding leave to parties who wish to amend their pleadings.
  - d. The suit to be heard together with:
    - i. Meru ELC Petition No 14 of 2021 Lawrence Kanyi Ndegwa vs AG & others.
    - ii. Meru ELC Petition No E013 of 2021 Joshua Kathawe & 150 others v CS Minister of Land and 5 others.
    - iii. Meru ELC 23 of 2018 Joseph M’Kubania Muthabe & 10 others v DLASO Tigania East & West.
    - iv. Meru Petition No 9B of 2012 Andrew Kaluma & 3 others v DLASO Igembe.
    - v. Meru HC Petition 13 of 2018 Akithi Ranching Co Ltd v DLASO Tigania East & West & 30 others.
    - vi. Meru ELC Petition 5 of 2019 Muthara Njuri Ncheke Council of Elders v Committee of Ngaremara Gambella Adjudication Section & others.
    - vii. Meru ELC Petition No 10 of 2019 Mike Makarena v DLASO Tigania East & West.
    - viii. Meru ELC Petition No 11 of 2019 Tabache Conso Gallo & 3 others v CS Minister of Defence & 7 others.
2. The application is based on the grounds on the face of it and the supporting affidavit sworn by Earnest Langat on May 11, 2022. The applicant averred that the affected land is the same in this matter and in all the listed files. That there are other matters determined by this court touching on the adjudication section namely Meru ELC Petition No 5 and 10 of 2019. That is necessary to discontinue the litigation under Section 30 of the Land Adjudication Act (cap 284). That some of the matters are currently being negotiated separately for a possible settlement by the government and other parties with the intention of completing the adjudication process. That for ends of justice, room should be given to the Land Adjudication and Settlement Officer (LASO) to complete his work and produce the adjudication register in line with Sections 24 and 25 of Cap 284. That it has taken time to comprehend that this matter of 1992 was related to Ngaremara/Gambella Rikiau Adjudication Section since the two names were not specifically pleaded. That the Land Adjudication and Settlement Officer may not perform his duties to the best of his abilities if this matter and other litigation come up and that the community may suffer great losses affecting the land registration process in the affected area. That there was a need to amend the pleadings to include all the other suits which should proceed together before the same judge by bringing to the attention of the court the status and issues for determination by way of a counterclaim. That in 1977, there was a Gazette Notice No 3210 of 1977, which allocated a specified land in Isiolo County then a trust land to the Ministry of Defence for military purposes.
3. Further, Earnest Langat in his supporting affidavit averred that the area was declared an adjudication section by a notice dated 11.3.2016 and that the adjudication process had been going on albeit with interruptions through the court cases. That 247 people claiming to be members of the Ntarangwi Scheme brought this suit before the area was declared an adjudication section, now yet to be completed. In support of the application, the applicant attached the pleadings in the referenced pending suits/matters, a declaration notice, a copy of the draft defence and counterclaim, and a report on the current status of the adjudication process all marked as ELC 1-3, respectively.



4. The application was duly served upon Kiautha Arithi & Co Advocates, Charles Kariuki & Kiome Advocates, Ruthugua & Associates Advocates, Mboos Mutunga & Co Advocates, MD Maranya & Co Advocates, for the respondents herein. When the matter came up on 3.11.2022, Mr. Gitonga and Mr Mutunga advocates appeared for the plaintiff in this matter, Mr Karanja advocate held brief for Mr Mwirigi Kaburu advocate for the 3<sup>rd</sup> & 4<sup>th</sup> defendants, while Mr Wamache advocate appeared for the interested parties. Leave was extended for the respondents and the interested parties to file any responses to the notice of motion within 45 days from the date hereof. The Hon. Attorney General was also directed to effect service as per prayer number 1 of the application within 60 days from the date hereof. Parties were also directed to put in written submissions before the hearing on 24.1.2023.
5. The matter came for hearing on 24.1.2023 when the defendants indicated that they were not opposed to the notice of motion while Mr Wamache advocate for the interested parties said that his instructions were to oppose the motion though no replying affidavit had been filed to date.
6. From the court record, this matter was filed as a representative suit by members of the Ntoringwi Scheme on 29.4.1992. Their claim was that the suit land had been allocated to them by the then Minister for Lands in 1970 and which they occupied until 1980. It was averred that in 1980, part of the land belonging to 15 of their members was taken by the Department of Defence and occupied by the 78 Tank Battalion Isiolo. However, in 1986, some other different people apart from them were allocated the land without their consent or knowledge. They sought to be declared the true owners', compensation for the 15 plots taken by the Department of Defence; an order that the rest of the land be subdivided and title deeds issued and lastly, a restraining order against the lands office from allocating the land to other people apart from their members. This court upon an interlocutory application issued inhibition orders were given on 22.5.1992 to preserve the property.
7. Following protracted attempts for an out-of-court settlement, the court formally referred the matters for alternative dispute resolution by an order dated 25.4.2018, attempts unfortunately collapsed leading to the commencement of hearing on 1.10.2018 with PW 1-3 offering their testimony.
8. Having set the foregoing background, the power to stay judicial proceedings is a matter of judicial discretion to be exercised in the interest of justice. In deciding whether to stay or not, the court usually weighs the pros and cons of granting or not granting the order. In the case of *Global Tours & Travels Ltd, Nairobi HC Winding Up Case No 43 of 2000*, the court set out some of the factors to consider as; - the need for the expeditious disposal of cases, the prima facie merits of the case, the optimum utilization of judicial time and lastly, whether or not the application has been brought expeditiously.
9. In the case of *Kenya Wildlife Service vs James Mutembei* [2019] eKLR the court held that given that a stay of judicial action seriously interferes with the right of a litigant to access to justice and right to be heard without delay and overall the right to a fair trial, the test for a stay should be high and stringent.
10. Article 159 2 (a), (b), (c) and (d) of the *Constitution of Kenya*, sections 1A and 1B of the *Civil Procedure Act* as read together with section 3 of the *Environment and Land Court Act* mandates this court to foster and facilitate the rendering of justice to the parties in all civil cases in a just, expeditious, proportionate and affordable cost.
11. In this application, the court is being asked to stay the suit and other related proceedings before it and other courts and given that the suit land was declared an adjudication section on 11.3.2016, all such suits or proceedings stand stayed and cannot proceed without a consent from the land adjudication officer as provided under section 30 of the *Land Adjudication Act*.
12. The reason for the delay to apply for a stay is that the applicant herein was not aware that this suit related to the Ngaremara/Gambella Rikiau Adjudication Section since the plaintiffs had not specifically



mentioned the said names or facts in their pleadings but only described the land as Ntoringwi scheme. Alongside and related to this prayer, the court is asked to consolidate and stay this suit with the named files in prayer (d) above. In order to facilitate this, the court on 3.11.2022 granted the applicant leave to serve the application through a substitute to the public and all affected parties. No evidence of the service upon all the parties in the named files has been filed herein.

13. The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for a fair and impartial dispensation of justice to the parties. In [LSK v Centre for Rights and Democracy](#) [2013] eKLR, the Supreme Court of Kenya held that consolidation was never meant to confer any undue advantage upon the party that seeks it nor was it intended to occasion a disadvantage toward a party who opposes it.
14. In this suit, the intended parties to the suits sought to be consolidated and afterward stayed were never served despite a clear court order. On that score alone, the court finds no basis to consolidate and or stay such other suits without prior notice to the parties and public at large as ordered. Consequently, the court declines to grant any consolidation of the named suits with this file and or extension of any orders likely to be issued herein to the matters listed in prayer number (d) of this application.
15. Coming to the prayer on whether to stay this suit, in the case of [Bhaijee and another vs Nandi & another](#) (Civil Appeal 139 of 2019) (2022) KECA 119 (KLR) February 18, 2022) (Judgment), the court held that the rationale behind Section 30 of the [Land Adjudication Act](#) was because there was an elaborate process laid down in cap 284, on how to determine which person(s) were and the extent to which they were entitled to an interest in the land under the adjudication. The court therefore held that it was necessary that Section 30 be employed first before the resort was made to the court. The court further said that the section also shielded the process of adjudication from any unnecessary and or unjustified abuses, such that the lack of consent under Section 30 (4) of the [Land Adjudication Act](#), rendered any court proceedings over land falling under a declared adjudication section, a nullity.
16. In this suit, it has been demonstrated that the Ntarangwi area falls under an area that was declared an adjudication section on 11.3.2016. The plaintiffs and the interested parties have not opposed this fact or laid any basis why the suit should continue during the pendency of the adjudication process. None of them have sought and or obtained consent to sue or continue with the suit, despite the land being under an adjudication section.
17. In the case of [Tobias Achola Osidi & 13 others v Cyprianus Otieno Ogalo & 6 others](#) [2013] eKLR, the court held it had no jurisdiction to determine ownership for land falling under an adjudication section since the ascertainment of such interest to land falls under the province of the land adjudication officer.
18. In this suit, the prayers sought by the plaintiffs in the plaint cannot be granted by the court until the ascertainment of interests to the land was finalized under the Land Adjudication Act and a certificate of finality issued.
19. There appears to have been a mistake in the running and an undetected of the suit yet there was an absolute bar to its pendency with effect from 11.3.2016. The court was not aware of these facts until it was brought to its attention through this application. Maybe the plaintiffs were aware of this and filed to make a disclosure. PW 3 as a land adjudication officer was unhelpful and did not bring it to the attention of the court about this when he testified in 2018.
20. Jurisdiction is everything and as held in [Owners of the Motor Vessel "Lillian S" v Caltex Oil \(Kenya\) Ltd](#) [1989] KLR 1, a want of consent to sue raised at whatever stage of a suit, requires the court to determine the issue of jurisdiction in limine. As to when a question of jurisdiction can be raised, in the case of [Republic v Chief Registrar of the Judiciary & 2 others Ex parte Riley Services Ltd](#) [2015] eKLR,



the court held that a preliminary objection can be raised at any stage and if such a preliminary objection exists it was advisable to raise it at the earliest opportunity.

21. In the instant suit, the question of jurisdiction was raised by the defendants on 3.10.2022. In the case of *Peter Kabete M’Nkanyuaga v Jacob Mutegi Mwatih* [2017] eKLR, the court held it had no jurisdiction to handle an unadjudicated land except on questions concerning the integrity of the adjudication process, while in *Hassan Ngoka Dzombo v Ruwa Kope & another* [2021] eKLR, the court upheld a preliminary objection on jurisdiction and proceeded to strike out the suit filed on an unadjudicated land.
22. Given the foregoing, this court finds it lacks jurisdiction to sustain or entertain this suit which is over land undergoing adjudication. The suit became a nullity the moment the land was declared an adjudication section. It cannot be stayed since it is a nullity. The same is hereby struck out with no order as to costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 8<sup>TH</sup> DAY OF MARCH, 2023**

**In presence of:**

C/A: Kananu

Parties present

**HON. C.K. NZILI**

**ELC JUDGE**

