



**Riara v Kirunya & 2 others (Environment and Land Case Civil Suit  
55 of 2012) [2023] KEELC 15854 (KLR) (1 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 15854 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND CASE CIVIL SUIT 55 OF 2012**

**CK NZILI, J**

**MARCH 1, 2023**

**BETWEEN**

**FATUMA MAITHA RIARA ..... PLAINTIFF**

**AND**

**SELU SULEMAN LIARA KIRUNYA ..... 1<sup>ST</sup> DEFENDANT**

**LAND ADJUDICATION OFFICER – TIGANIA WEST ..... 2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. Through an amended plaint dated 31.2.2022, June 28, 2012 the plaintiff sued the defendants alleging fraud in the manner in which land parcel No 3858, Antuamburi adjudication section was consolidated, allocated and registered from the name of the plaintiff's late husband Gullan Muhammed to the names of the defendant. She prayed that the land reverts to her name. The plaint was accompanied by witness statements dated October 9, 2018; a consent to sue dated February 10, 2012; proceedings before the land adjudication officer, and a demand letter to the 2<sup>nd</sup> defendant. Later on, the plaintiff filed a paginated bundle of documents on October 19, 2018.
2. By an amended defence and counterclaim dated July 14, 2012, the 1<sup>st</sup> defendant averred that the suit land was lawfully registered under her name following the inheritance of the same by her late husband from her father-in-law, as a separate and adjacent land to that of the plaintiff. The 1<sup>st</sup> defendant averred that she had lived on the said land together with her children all her life. She denied any alleged fraud or need for letters of administration at the time she participated in the objection proceedings before the land adjudication committee case.
3. By way of a counterclaim, the 1<sup>st</sup> defendant as the plaintiff in the counterclaim averred that the plaintiff's late husband was a brother to her late husband entrusted by their late father-in-law to gather and consolidate the land on behalf of the family but fraudulently and solely registered the land under



his name, while aware that the plaintiff in the counterclaim, her late husband and the children were in occupation of the land as their permanent home. In the counterclaim, she prayed for a declaration that she was the rightful owner of the suit land. The defence and counterclaim were accompanied by witness statements and a list of documents dated June 1, 2012.

4. In a reply to the defence and defence to counterclaim dated June 28, 2012, the plaintiff denied that the suit land was family land and that it was acquired through purchase. She averred that when the land was displaced by a school, the 2<sup>nd</sup> defendant relocated her family to the present locality. Further, it was averred that the 1<sup>st</sup> defendant and her children sold their portion and relocated the sold portion elsewhere leaving a gap which was filled by the current parcel after a second re-allocation by the 2<sup>nd</sup> defendant.
5. In defence of the counterclaim, the plaintiff denied the 1<sup>st</sup> defendant's claim since the suit land was acquired through a sale and not a family-gathered land. It was averred that though some of the 1<sup>st</sup> defendant's structures were on the site the same were dilapidated and in a desolate state, unfit for any human habitation. The plaintiff averred that the suit land belonged to her while the 1<sup>st</sup> defendant's land was adjacent to the said suit land.
6. Further, the plaintiff denied that the 1<sup>st</sup> defendant had any occupation rights given that the ground position was allocated to her family as vacant land before the fraudulent and illegal transfers made on June 24, 2010. She termed the 1<sup>st</sup> defendant as a trespasser with condemned buildings on the land.
7. Despite service of summons, the 2<sup>nd</sup> & 3<sup>rd</sup> defendants failed to file any defence to the suit as directed on March 2, 2017, except a witness statement dated November 16, 2018 through Benjo K. Daniel, the sub county land adjudication and settlement officer who denied any alleged irregularities on the part of the 2<sup>nd</sup> defendant.
8. On his part, the 4<sup>th</sup> defendant filed an amended defence dated September 18, 2018 accompanied by a list of witness statements and documents on the even date. His defence was that the plaintiff and the 1<sup>st</sup> defendant were driven by greed or lust to deny him his late father's property. In particular, the 4<sup>th</sup> defendant averred that the 1<sup>st</sup> defendant took advantage of the estate of his late brother Fatehadin Alayeh Khan after his late widow and her son, then a minor left Meru, in which he misrepresented the facts and altered the land records. He prayed that he be declared the rightful owner of the land. The defence was accompanied by written statements and documents dated September 18, 2018 and a supplementary statement and list of documents dated April 25, 2019. These were eventually included in the paginated bundle filed on October 8, 2019.
9. Following an order dated February 21, 2019, the District Land Registrars Meru North and Meru Central were directed to appear in court and explain the status and genuineness of title deed No Tigania East/Antuamburi/3858. The DCIO Tigania East was also directed to investigate the genuineness of the title deed and the official search filed before the court.
10. Following directions taken on 31.2.2022, parties under order 18 of the [Civil Procedure Rules](#) agreed that the matter to proceed from where it was left by the predecessor to this court.
11. Nancy Nyambura Njenga, the District Land Registrar Meru North testified as PW 1. Her evidence was that according to the court order dated February 11, 2019 and a letter from the law firm of Kaimenyi Kithinji & Co Advocates dated October 29, 2019, it was impossible to supply or produce any green card since no title deed had been issued for Tigania/Antuamburi/3858 from her registry. She confirmed that both the title deed and an official search before the court were not from their land registry Meru North. She produced the letter dated March 19, 2019 as P Exh No 1.



12. In cross-examination, PW 1 confirmed that the title deed and the official search before the court were not genuine. Further, she said that from the adjudication record, the original owner was Mohamed Maitha who later transferred the land during the adjudication process to the 1<sup>st</sup> defendant. PW 1 said that all that she had in her office was an adjudication record showing that parcel No 2456 belonged to the 1<sup>st</sup> defendant. In cross-examination by the 4<sup>th</sup> defendant, PW 1 insisted that there was no land registrar at their land registry by the name Karuti with a registration number 200 or one Kamwara. She could not also confirm the authenticity of the official seal appearing in the official search and in the official receipt held by the 4<sup>th</sup> defendant.
13. Catherine Makau, a land registrar at Meru central was PW 2 She confirmed that parcel No. Antuamburi/3856 did not fall under her land registry hence the title deed and the official search before a court could not have originated from her office. She could also not confirm if one land registrar number 200 by the name Karuti ever worked at her land registry. However, she said that by February 22, 2018, there used to be a land registrar by the name of B.K Kamwara. PW 2 clarified that it was an impossibility for a parcel situated in Antuamburi Tigania East to be registered in her land registry let alone a title deed or an official search to be issued thereon. She said that she could not confirm the genuineness of receipts numbers 200 and 145.
14. Benjo Kibet Daniel testified as PW 3. As the Deputy District Land and Settlement Officer Tigania East, his evidence was that the Antuamburi adjudication section was declared in 1966 but progressed up to 2016 due to the unique problems in the Meru region among them personnel, poor planning, political interference and some logistical problems. He said that the notice of completion of the adjudication process was published on May 20, 2008 for the section inviting the public and landowners to inspect the register for a period of 60 days and to raise any issues arising out of it. PW 3 said that all objections raised were heard as per section 26 of the [Land Consolidation Act](#) and a certificate of completion was made on November 28, 2016. PW3 said that this certificate marked the adjudication process as complete paving way for all its records to be forwarded to the Director of Land Adjudication and Settlement for the onward transmission to the Chief Land Registrar for titling from the effective date. PW 3 said no title deed could be processed before the certificate of finality was issued. He said that parcel No 3858 was affected by the ongoing case at the time the adjudication records were being forwarded for titling and therefore it was restricted until the suit could be heard and determined as per the letter dated February 3, 2017.
15. PW 3 was emphatic that parcel No 3858 was not cleared for any registration hence no title deed or green card could have existed before its registration.
16. Additionally, PW 3 produced the letters dated November 28, 2016 and February 3, 2017 as P Exh No (2) & (3) namely the certificate of finality and restriction.
17. More so, PW 3 confirmed that parcel No 3858 initially belonged to one Gulam Moahmed Maitha but was later transferred to the 1<sup>st</sup> defendant following an A/R objection No 2456. He was unable to confirm the veracity of the letter dated January 23, 2018 allegedly originating from their offices since all that they had were the adjudication records namely; A/R records; the map; a field notebook and the record of existing rights. PW 3 said that when rights are determined in the field, entries are made in the field notebook and are later transferred into the A/R record. He confirmed that he had no records relating to the 4<sup>th</sup> defendant in their offices.
18. Similarly, PW 3 confirmed that the decision arising out of an A/R objection under section 26 of the [Land Consolidation Act](#) was final and only challenged by way of judicial review. He confirmed that the adjudication section was processed under the [Land Consolidation Act](#) (cap 283) and so was the



confirmation of the parcel by a letter dated July 28, 2010. A/R objection which yielded the cancellation of the record from Gulam Mohamed Maitha to the 1<sup>st</sup> defendant. In his view, the 4<sup>th</sup> defendant was only featuring for the first time in court. PW3 said the adjudication process was at the hearing and determination of objection cases, so any title deed issued in 2009 for the area was not genuine since the certificate of finality came out on November 28, 2016. Further, PW3 said that he was therefore not privy to the circumstances under which a title deed was purportedly issued to the 4<sup>th</sup> defendant given that there were no special circumstances in existence to justify the same, which in any event, such special manner does not exist under cap 283.

19. Regarding A/R objection No 2456, PW 3 told the court that he was not the one who personally handled the objection proceedings. Therefore, he could not tell if the 1<sup>st</sup> defendant at the time disclosed all her family members and the occupants of the suit parcel. Similarly, PW 3 could not clarify if one Amina Mohamed Abdalla had also filed an A/R objection since after the adjudication records were forwarded to Nairobi, he was not in a position to access them.
20. The next witness was Fatuma Maitha Riara, the plaintiff herein. She referred to the list of bundles dated October 9, 2018 No's 1-5 which was objected, to leading to a ruling dated December 3, 2019. For purposes of clarity, the court erroneously recorded her as PW 1 but ideally, she should have been PW 4. She produced consent to sue as P Exh No (4), adjudication proceedings as P Exh No (5), a notice to the 3<sup>rd</sup> defendant as P Exh No (6), letters dated February 3, 2010 and January 23, 2018 from the adjudication office as MFI P (7) & (8), copy of letters of administration as P Exh No (9), a sketch map as MFI P/No (10), (a) & (b), a copy of the adjudication register as MFP (11) and photographs as P Exh No 12 (a) – (e) respectively. She denied that the land belonged to either the 1<sup>st</sup> defendant or the 4<sup>th</sup> defendant. In cross-examination, PW 4 denied that her late husband was a brother to the 1<sup>st</sup> defendant's late husband. Her evidence was that the objection proceedings were being undertaken by Amina Mohamed but could not tell the outcome including whether it was the 1<sup>st</sup> defendant who won the A/R case. She termed any record showing the 1<sup>st</sup> defendant as the owner incorrect. In her view, the land in issue was under nobody's occupation for the last 20 years, least of all, the 1<sup>st</sup> defendant. PW 4 said that how the A/R case at the adjudication office was handled and the land recorded in favour of the 1<sup>st</sup> defendant was fraudulent since the land belonged to her late husband. On cross-examination by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants' counsel, PW 4 insisted that the 1<sup>st</sup> defendant influenced the officers dealing with the A/R case to unfairly determine the dispute and deny her a chance to testify and or offer her defence.
21. PW 4 said that her late grandfather had two wives each with a separate share of the land. Her evidence was that though the decision to deny her the land was made 9 years ago, she opted to challenge it through this suit instead of an appeal. In her view, the 1<sup>st</sup> defendant belonged to the 2<sup>nd</sup> house of her late grandfather.
22. PW 5 was Elias Kamaru, a land adjudication and settlement officer in Tigania East and Central. His testimony was that Amina Abdalla filed an A/R objection regarding the suit land in 2010 which objection was heard and determined and the land transferred to her and the 1<sup>st</sup> defendant. In his view, the record of the proceedings did not indicate whether Amina Abdalla was representing the 1<sup>st</sup> defendant in the objection. In his view there was an irregularity to record the name of the 1<sup>st</sup> defendant as the recorded owner of the land yet she had not filed the objection and or was represented by the objector. He produced MFI P 7 and (8) and 10 (a) & (b) and 11 as P Exh No 7, 8, 10 (a) & (b) and 11, respectively. In his view, the record of existing rights showed that parcel No 298 was initially in the name of Gulam Mohamed Maitha but after the objection, a portion of it became parcel No 3858. He could not however tell the relationship between the plaintiff and the previous owner of the suit land.



23. In cross-examination, PW 5 told the court that A/R objection No 2458 was about a displacement where the respondent to the objection was represented by the plaintiff. PW 5 admitted that in P Exh No (2), the name of Amina Abdalla was missing. He disputed the contents of P Exh No (5) in so far as it was not written directly to the court. He said that the exhibits in their offices showed that the land belonged to both Amina Abdalla and the 1<sup>st</sup> defendant.
24. Michuki M'Chokera testified as PW 6 and adopted his witness statement dated October 9, 2018 as his evidence-in-chief. His evidence was that parcel No 3858 was sold to the late Gulam Mohamed Maitha by his late father out of parcel No 7, 1 and after a displacement on account of public use. He said that the purchaser in exchange was given an alternative land next to a mosque. He was however not aware of any objection proceedings by the 1<sup>st</sup> defendant at the land adjudication offices.
25. Esther Kamathi Mumbi was PW 7. Her evidence was that parcel No 3858 was sold to her husband by the plaintiff's husband while the land was occupied by Amina Abdalla, a relative of the plaintiff and the 1<sup>st</sup> defendant. She however had no such sale agreement before court.
26. Amin Mohamed Khan testified as PW 8. As a son of the plaintiff, he testified that his late grandfather had two wives and two plots No's 1 & 4 Mikinduri Town. He said that his grandmother belonged to the 1<sup>st</sup> house and used to live on plot No 4 while the 2<sup>nd</sup> wife lived on plot No 1. He said that a portion of the land was taken by the government as per the letter dated January 23, 2018 and the record of existing rights. His evidence was that during the A/R objection proceedings, the element of displacement was not brought to the attention of the 2<sup>nd</sup> defendant. He testified that his late father as the eldest son was the one who had gathered or acquired the land. He denied that the land was held in trust since it was bought from PW 6. It could not, therefore, form part of the ancestral land. He said that they used to live on the land. PW 8 told the court that the 1<sup>st</sup> defendant was ordered to vacate the land. Eventually, she complied with the notice and relocated to Meru town.
27. DW 1 was the 1<sup>st</sup> defendant. She adopted her witness statement dated June 1, 2012 as her evidence-in-chief and produced the objection proceedings as D Exh No (1), a letter of confirmation of ownership as D Exh No (2) and a bundle of photographs as D Exh No 3 (a) & (b).
28. In cross-examination, DW 1 said that she was unaware if the suit land was acquired by way of purchase by her late father's father-in-law since it was not indicated as such in his will. While admitting that the plaintiff participated in the A/R objection proceedings, DW 1 denied any alleged fraud or collusion in the manner in which the A/R objection was heard, determined and the land registered under her name. She insisted that the land was an inheritance from her mother-in-law through her late husband. She said she voluntarily vacated the land and moved to Meru town for business purposes. She insisted that it was her late mother-in-law who directed them on where to erect a house and lived therein with her late husband.
29. At the close of defence testimony parties were directed to file written submissions by January 27, 2023.
30. In her written submissions, the plaintiff took the view that her exhibits and witnesses called corroborated her evidence that the A/R objection was filed by Amina Mohammed but was irregularly heard since there were no committee members. It was the plaintiff's submission that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants failed to testify to sustain their defence, especially the 4<sup>th</sup> defendant whose defence and counterclaim together with the accompanying documents should be disregarded.
31. The 1<sup>st</sup> defendant submitted that since the suit land fell under the *Land Consolidation Act*, the court could only intervene where there was an allegation as to the interpretation of the law, flawed procedure or process as held in Meru JR E009 of 2021, *Marigueta Nkoyai M'Thiringi vs DLASO Karama*



Adjudication & another, Meru ELC appeal No 28 of 2019 John Kiriabu Laikuru v Stanley Mugambi Lithara & others, Julia Kaburia v Kabeera & 5 others civil appeal No 340 of 2002, Republic v DC Machakos & another ex parte Kakui Mutiso (2014) eKLR.

32. The court has already carefully gone through the pleadings, the list of documents filed, oral and documentary evidence tendered, issues for determination filed by the parties and their written submissions. The issues for the court's determination are:-
- i. If the dispute is properly before the court.
  - ii. If the 2<sup>nd</sup> defendant conducted the A/R objection No 2456 against parcel No 3858 Antuamburi adjudication section under the law.
  - iii. If the 1<sup>st</sup> defendant was legally recorded as the owner of the suit land.
  - iv. If the parties are entitled to the respective reliefs as sought in the plaint and the counterclaim.
33. It is trite law that parties are bound by their pleadings and issues flow from pleadings. See IEBC & another v Mutinda Mule & 3 others (2014) eKLR.
34. In this suit, the primary pleadings are the amended plaint dated June 28, 2012, the 1<sup>st</sup> defendant's amended defence and counterclaim dated July 14, 2012, a reply to defence and defence to the counterclaim dated June 28, 2012, and the 4<sup>th</sup> defendant's amended defence dated September 18, 2018. On the part of the 2<sup>nd</sup> & 3<sup>rd</sup> defendants, what was filed as a pleading was only a witness statement dated November 16, 2018 and which was also admitted as part of his evidence by PW 3. In the said witness statement, the 2<sup>nd</sup> defendant stated that the suit land was initially recorded in the names of Gullam Mohamed Maitha and later on, to Amina Mohamed Abdalla and Silu Suleiman *vide* A/R objection *vide* A/R objection No 2456 which had been filed on August 6, 2008 by Amina M. Abdalla M *vide* official receipt No A875342. He stated that the said A/R objection was heard and determined on June 24, 2010.
35. The 2<sup>nd</sup> defendant averred that it was not clear from their records whether parcel No 3858 was compensation for displacement by a public utility and or whether parcel No 2858 was separately demarcated to the same land owner from parcel No 298. The 2<sup>nd</sup> defendant denied the contents of paragraph 8 (c) and (d) of the amended plaint relating to the illegal or unprocedural hearing and determination of the A/R objection together with the subsequent registration of the parcel in the name of the 1<sup>st</sup> defendant.
36. In paragraph 4 of the witness statement, the 2<sup>nd</sup> defendant averred that the contents of paragraph 9 of the amended plaint were untrue since the A/R objection was raised, heard and determined by the land adjudication officer under the Land Consolidation Act (cap 283), as per the attached certified copies of the proceedings.
37. Arising out of the parties' pleadings, several documents were produced as exhibits among them, P Exh No (1) attaching the adjudication record which was certified on March 26, 2019 as a true record, P Exh No (2), the certificate of finality, D Exh No (1), the objection proceedings and decision, D Exh No (2), the confirmation of ownership to the 1<sup>st</sup> defendant by the 2<sup>nd</sup> defendant, P Exh No 7 was a confirmation that the initial owner of parcel No 3858 was the plaintiff's late husband, P Exh No (8) explained the history of the suit parcel and the manner of consolidation P Exh No 9 attached a will as well as P Exh No 10 (a) & (b)
38. Looking at all these exhibits, it is not in dispute that the suit land was governed by the Land Consolidation Act. The plaintiff sought and obtained the consent to sue dated February 10, 2012



- relating to parcels No's 1087 and 3858. This was issued under section 8 (1) of the [Land Consolidation Act](#). Therefore, the jurisdiction of the court in my view was properly invoked since under the said law the decision made under section 26 thereof was not appealable to the Minister due to its finality. This court retains residue jurisdiction to supervise the manner, process and legality of any proceedings and decisions made under cap 283. This essentially is what the plaintiff has pleaded before this court. See *Tobias Achola Osindi & 13 others v Cyprianus Ogalo & 6 others* (2013) eKLR.
39. Coming to the next issue as to whether the A/R objection was received, heard, determined, processed and the land recorded in favour of the 1<sup>st</sup> defendant by the 2<sup>nd</sup> defendant, in line with the law, unlike the [Land Adjudication Act](#), the centrality of the Land Adjudication Committee is key in the [Land Consolidation Act](#).
  40. In the case of [Republic v DLASO Tigania East Exparte Paul Mwenda Maingi; Manii Joseph M'Imutura](#) (IP) 2022 eKLR the court citing with approval [Peter Kimandiu v Land Adjudication Tigania West District & 4 others](#) (2014) eKLR it was held that section 26 (1) of the [Land Consolidation Act](#) sets out the role of the Land Adjudication Committee in an adjudication register objection and that a land adjudication officer could not consider the objection alone without involving the committee. The court held that the role of the committee was not cosmetic.
  41. In this suit, the plaintiff is questioning the legitimacy of the land adjudication process in so far as the hearing and determination of the A/R objection. See [Johnson Mbaabu Mburugu & another v Mathiu Nabea & others](#) (2020) eKLR & [Julius Kailikia Laaru v Paul Kaigera Laaru](#) (2020) eKLR.
  42. In the witness statement made by the 1<sup>st</sup> defendant and his testimony as PW 3, he merely claimed that the A/R objection and proceedings were legally and procedurally heard and determined. P Exh No 5 which was also produced as D Exh No 1 did not include or demonstrate if the Land Adjudication Committee was involved in the proceedings. Additionally, there was no indication if the issues regarding the manner of the displacement, consolidation and the history of the suit parcel as indicated in the letters produced as P Exh Nos 7, 8, 9, 10 & 11 were considered during the hearing and determination of the A/R objection, yet they were in my considered view, central to the issue at hand. Moreover, there was no indication of how the land shifted to the name of the 1<sup>st</sup> defendant who had no nexus with the initially recorded owner without a demonstration of her capacity.
  43. In Nakuru ELC judicial review case No 13 of 2014 [Republic v Musanka Ole Runkes Tarakwa Lempaso Ole Kuyioni & 2 others](#), Munyao J held that a suit that questions the process of land adjudication rather than the determination of interest was not a suit concerning an interest in land. There are clear demonstrations that the 2<sup>nd</sup> defendant failed to adhere to the law. The decision arising therefrom is in my view, a product of a flawed process.
  44. In the case of [Macfoy v United Africa Co Ltd](#) (1961) 3 ALL ER 1169 the court held that if an act was void, then in law it was a nullity, without much ado and every proceeding which was founded on it, was also bad. In this suit, the 1<sup>st</sup> defendant cannot benefit from a nullity. In her counterclaim, she was asking the court to declare her as a true owner of the land and so was the 4<sup>th</sup> defendant. This court cannot grant any of the prayers sought by the two parties based on illegality and on a forged title deed obtained before the certificate of finality was issued.
  45. The upshot is that I find the A/R objection proceedings and the subsequent decision(s) thereafter were illegal and unprocedural. The 1<sup>st</sup> and 4<sup>th</sup> defendant's defences and counterclaims are dismissed with costs. The A/R proceedings and the award are hereby set aside and the A/R objection remitted for rehearing by a different panel in line with the law within 3 months from the date hereof. Costs for the suit to the plaintiff.



**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 1<sup>ST</sup> DAY  
OF MARCH, 2023**

**In presence of:**

**C/A: Kananu**

**Muriuki for 1<sup>st</sup> defendant**

**Kaimenyi for plaintiff**

**HON. C.K. NZILI**

**ELC JUDGE**

