



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT MACHAKOS

ELC CASE NO. 130 OF 2018

PETER N. NGANDI.....1ST PLAINTIFF

PAUL N. NGANDI.....2ND PLAINTIFF

BERNARD M. NGANDI.....3RD PLAINTIFF

VERSUS

JOHN MUTHAMI.....1ST DEFENDANT

HONOURABLE ATTORNEY GENERAL.....2ND DEFENDANT

JUDGMENT

1. In the Plaintiff dated 11th June, 2018, the Plaintiffs averred that they jointly own a parcel of land in Mutitu sub-location known as parcel Number 139 Kawala Adjudication Section (the suit property); that during the adjudication process, the 1st Defendant raised an objection claiming ownership of part of the suit property and that the said objection was heard and a new title was created from the original parcel number 139.
2. According to the Plaintiffs the new title that was created out of parcel number 139 became to be known as parcel number 472 Kawala Adjudication Section; that the said parcel number 472 was registered in the name of the 1st Defendant and that the 1st Defendant was claiming the said land on behalf of his late father who had already passed on.
3. The Plaintiffs averred that the 1st Defendant lacked the legal capacity to raise an objection on behalf of his late father; that the 1st Defendant was not the legal representative of the late Muthami Kyongo and that the late Muthami Kyongo, the father of the 1st Defendant had leased the portion of the land the 1st Defendant was claiming from them
4. The Plaintiffs have sought for a declaration that the decision of the Deputy County Commissioner, Mutitu, in Minister land case number 41 of 2015 over plot number 472 Kawala Adjudication Section was null and void and a declaration that the Plaintiffs are the joint owners of land known as 472 Kawala Adjudication Section. The 1st Defendant filed his Defence in which he denied generally the averments in the Plaintiff.
5. In his testimony, the 1st Plaintiff, PW1, informed the court that the 2nd and 3rd Plaintiffs are his brothers; that the Land Adjudication Officer, while hearing a dispute in respect of parcel of land known as 139 Kawala Adjudication Section, partitioned the land and created parcel number 472 Kawala Adjudication Section and that he awarded the said land to the 1st Defendant.
6. According to the evidence of PW1, the 1st Defendant was litigating on behalf of his late father; that as at the time the 1st Defendant raised an objection in respect of parcel number 139, he had not taken out letters of administration to represent the Estate of his late father and that the 1st Defendant had no legal capacity to lodge a complaint against them.
7. PW1 informed the court that parcel number 139 belonged to them; that they only leased a portion of the said land to the 1st Defendant's father, Muthami Kyongo and that it was wrong for the Deputy County Commissioner to have entertained the 1st Defendant's claim.
8. In cross-examination, PW1 informed the court that the Plaintiffs inherited the suit property from their late father; that they did not have the letters of administration in respect of their late father's estate and that they have been living on the suit property since the year 1952.
9. According to PW1, they entered into a lease agreement with the 1st Defendant's father over a portion of parcel number 139 on 30th July,

1997; that the 1st Defendant's father was buried on the said land because he did not have a place to be buried and that the 1st Defendant's father used to pay for the usage of the land by giving them goats.

10. In further cross-examination, it was the evidence of Pw1 that he was heard by the Land Adjudication Officer; that he appealed against the decision of the Land Adjudication Officer to the Minister who also dismissed his appeal and that his late father has owned the entire land since 1952.

11. On his part, the 1st Defendant, Dw1, informed the court that parcel of land known as 472 Kawala Adjudication Section belongs to him; that when he was born, he found his grandparents and parents living on the land and that when his grandparents, father, step-mother and elder brother died, they were all buried on the land.

12. It was the evidence of Dw1 that the land was awarded to him by the Land Adjudication Officer and the Minister in Mutitu sub-county land case number 41 of 2015.

13. In cross-examination, Dw1 stated that he was born in 1978; that they have used parcels of land numbers 472, 473 and 474 and that parcels number 473 and 474 arose out of parcel number 316. According to Dw1, he lives on parcel number 472 Kawala Adjudication Section.

14. In his submissions, the Plaintiffs' advocate submitted that parcel number 139 Kawala Adjudication Section belongs to the Plaintiffs; that a portion of the said land was leased to the 1st Defendant's father and that no ownership documents were ever conveyed to the 1st Defendant's father.

15. Counsel for the Plaintiffs submitted that the objection proceedings before the Land Adjudication Officer were conducted by the 1st Defendant on behalf of his late father and that the 1st Defendant has never taken out letters of administration for his late father's estate. Counsel relied on the case of **Julien Adoyo Onguuge & Another vs Francis Kiberenge Bondeva [2016] eKLR**.

16. The Plaintiff's counsel submitted that the decision of the Deputy County Commissioner in Mutitu Minister Land case number 41 of 2015 over plot number 472 Kawala Adjudication Section was null and void and that the Minister lacked jurisdiction to deal with the issue of cancellation of title and ownership of land.

17. On his part, the 1st Defendant's advocate submitted that this court does not have jurisdiction to entertain the suit; that the **Land Adjudication Act** does not have a provision for a further appeal from the Minister's decision to this court and that the Plaintiffs are challenging the decision of the Minister which was made pursuant to the **Land Adjudication Act**.

18. It is not in dispute that during the adjudication of Kawala Adjudication Section, the 1st Defendant raised an objection in respect of parcel number 139. The said objection was heard by the land adjudication officer who found that the 1st Defendant's father, Muthami Kyongo, had been using a portion of parcel number 139, and was in fact buried on the land when he died. The Land Adjudication officer decreed that a portion of parcel of land number 139 should be hived off, thus creating plot 472.

19. The Plaintiffs herein filed an appeal to the Deputy County Commissioner, Mutitu in Minister land case number 41 of 2015, plot 472. After hearing all the parties, the Minister upheld the decision of the Land Adjudication Officer.

20. The Plaintiff's have challenged the decision of the Minister on the ground that the 1st Defendant did not have the letters of administration in respect of his father's estate and that in any event, the 1st Defendant's father was a lessee of the land in question, and was not entitled to the said land.

21. **Section 29(1) and (2) of the Land Adjudication Act** provides as follows;

“(1) Any person who is aggrieved by the determination of an objection under section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by-

(a) delivering to the Minister an appeal in writing specifying the grounds of appeal; and

(b) sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.

(2) The Minister shall cause copies of the order to be sent to the Director of Land Adjudication and to the Chief Land Registrar.”

22. The above provisions of the law clearly provides that the decision of the Minister shall be final. Indeed, this court retains the residual supervision of the decisions of tribunals and quasi-judicial bodies like the decisions of the Minister under **Section 29 of the Land Adjudication Act**. However, such supervisory role can only be dealt with either in a Judicial Review Application or a Petition.

23. Although the court may also issue declaratory orders in respect of the decision of the Minister where the Minister's decision, on the face of it, is a nullity, such declaratory orders should be issued sparingly and in very exceptional circumstances.

24. This is so because the **Land Adjudication Act** contemplates the hearing and finalization of all objections in respect to an adjudication

section by the Minister, whereafter the register in respect to the adjudication section is to be completed. Do the circumstances of this case warrant the setting aside of the orders of the Minister in Mutitu Minister's land case number 41 of 2015?

25. Although the Plaintiffs have claimed that the 1st Defendant did not have the letters of administration in respect of his father's estate, he did not raise that issue with either the Land Adjudication Officer or the Minister. In any event, proceedings under the Land Adjudication Act do not require one to have letters of administration.

26. I say so because according to the preamble to the Act, the Act is meant to provide for the ascertainment and recording of rights and interests in community land. Any person interested in such land can therefore raise an objection during the adjudication process of community land, and does not require the letters of administration. This is the position by Odunga J in *Republic vs. District Commissioner Machakos & Another Ex parte Kakui Mutiso (2014) eKLR* where he held as follows:

“In my view, under the land consolidation and adjudication processes, the issue before the relevant tribunals is the determination of interest in land rather than individual ownership since individual land tenure only comes into being on registration. Therefore, before registration the land in question is either ancestral or falls under any other form of communal ownership i.e. Trust land. In such instances, it is my view that the application of the strict succession legal regime does not apply since in my view the issue of Estate may not be readily applicable to ancestral or communal property as such...”

27. The issue of whether the 1st Defendant's father was a lessee of the suit land or not is a factual issue that was raised before the Minister, and which was disregarded. The said issue cannot be litigated again in this court, the decision of the Minister on such factual issues being final.

28. In the circumstances, it is the finding of this court that the Plaintiff's suit lacks merit. The suit is therefore dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN MACHAKOS THIS 3RD DAY OF FEBRUARY, 2022.

O. A. Angote

Judge

In the Presence of:

No appearance for the Plaintiffs

No appearance for the 1st Defendant

Ms Nyakora for 2nd Defendant

Court Assistant: Okumu