



**Kamwaro v Land Adjudication Officer & another (Environment & Land
Miscellaneous Case E005 of 2021) [2022] KEELC 2375 (KLR) (5 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2375 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND MISCELLANEOUS CASE E005 OF 2021**

CG MBOGO, J

JULY 5, 2022

BETWEEN

SANTAU KAMWARO APPLICANT

AND

LAND ADJUDICATION OFFICER 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. Before this court for determination is the notice of motion dated July 6, 2021 and expressed to be brought under Order 51 Rule 1 of the [Civil Procedure Rules](#) and section 3, 3A & 63 (E) of the [Civil Procedure Act](#) seeking the following orders: -
 1. Spent.
 2. That the plaintiff/applicant herein be granted leave to file an objection on the parcel of land known as Adjudication Section Plot No. 55 Naisoya.
 3. That the costs of this application be provided for.
2. The application is premised on the grounds on the face of it and in the supporting affidavit of the applicant sworn on even date. The applicant deposed that he got into a sale agreement with Kipangas Nchoko for the sale of land and the 1st respondent summoned him to appear on October 11, 2019 and November 6, 2019 with regard to parcel of land known as Plot No. 55 Adjudication Section which parcel of land has since been changed from Adjudication Section Plot No. 55 Naisoya to Plot No. 55 Adjudication Section.
3. The applicant further deposed that because of the changes that have been made on the parcel numbers, the applicant cannot raise an objection since the same is time barred and thus prays for leave to file an objection out of time in regard to the suit land.



4. The respondents filed grounds of opposition to the application dated March 25, 2022 on the following grounds: -
 1. That the application lacks merit, is frivolous and an abuse of the court process and the same ought to be dismissed with costs to the respondents.
 2. That no valid grounds have been advanced to support the prayer for leave to file an objection out of time.
 3. That the applicant is guilty of laches as there has been inordinate delay in bringing the application to court.
 4. That this petition is an abuse of the court process as it has failed to meet the criteria for extension of time and thus falls short of the threshold set out in the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral & Boundaries Commission & 7 others* [2014] eKLR.
 5. The 1st respondent will be prejudiced as the exercise of adjudication was completed and the applicant did not raise any objection as stipulated under section 26 of the *Land Adjudication Act*.
 6. In addition to the grounds of opposition, the 1st respondent filed a replying affidavit sworn on May 10, 2022. The 1st respondent deposed that the subject matter relates to parcel of land known as Adjudication Section Plot No. 55 Naisoya in a section which was declared an adjudication section on March 7, 1975 during which demarcation was done and the suit property was recorded under the name of Kipangas Ole Nchoko. The 1st respondent further deposed that the section was published complete on 8th May, 2019 and the public was invited to lodge objections within 60 days from the date of the notice and at the expiry of the 60 days period, 92 objections had been filed. During this time, the applicant never filed any objection to the register which meant that the applicant had no query or interest in the suit land. Further, the suit land had an objection number 45 filed by Soitanae Ole Nchoko against Kipangas Ole Nchoko and it is worth noting that by the time the consent was issued on December 18, 2019, the filed objection had already been heard and determined.
 7. The 1st respondent deposed that the respondents will be greatly prejudiced as all the necessary steps of adjudication were followed and the applicant ought to have lodged his objection as provided under section 26 of the *Land Adjudication Act*. Further, that even after obtaining consent, the applicant did not take any steps to institute civil proceedings as he is guilty of laches and because of this delay, he is no longer entitled to bring an equitable claim.
 8. The applicant filed written submissions dated 2 April 6, 2022. The applicant submitted that the application clearly indicates that the reason why the objection was not filed on time is because the plot owner charged (sic) as by the time the applicant realised that it was charged, the sixty days had expired and it is in the interest of justice that the orders sought for leave to file objection out of time are granted.
 9. The respondents did not file written submissions.
 10. I have analysed the application, grounds of opposition, the replying affidavit and the written submissions filed by the applicant and the issue for determination is whether the application dated July 6, 2021 has merit. Before I go ahead to determine the matter before me, it is important to point out that I find the written submissions filed by the applicant irrelevant. The



contents of the written submissions appear to be an outline of his application and therefore of no beneficial use to this court.

11. An analysis of the pleadings indicate that the applicant bought the suit land from Kipangas Ole Nchoko and there were two occasions when the applicant and Kipangas Ole Nchoko were invited to appear before the Land Adjudication Officer. The two occasions were October 2, 2019 when they were to appear on October 11, 2019 and October 31, 2019 to appear on November 6, 2019. On the invitation letter dated October 2, 2019, it is indicated that this is the third time that Kipangas Ole Nchoko has failed to honour summons to appear before the adjudication officer. It is based on the above occurrence of events that the applicant sought consent to institute civil proceedings which consent was granted on December 18, 2019. What is not clear however, is why the applicant took one and a half years to file this application in court. It is trite law that he who seeks equity must do equity and delay defeats equity.
12. Section 30 (1) of the *Land Adjudication Act* states as follows: “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.”
13. The effect of section 30(1) is that unless the register has become final under section 29(3) of the *Land Adjudication Act*, all courts are mandatorily prohibited from entertaining disputes concerning land falling within adjudication areas.
14. In this case, the 1st respondent has conceded that the adjudication section was published complete on May 8, 2019 while giving a 60 days period to any aggrieved person to file an objection. I do note that twice Mr. Kipangas Ole Nchoko was summoned to appear before the adjudication committee but failed to do so. I do also note that according to the sale agreement annexed to the application, the applicant herein has an interest in land which has prompted the filing of this application. My understanding of the letter dated December 18, 2019, the adjudication officer states that in order to complete the adjudication register, he shall require in due course a copy of the final orders made. The letter does not give a time limit.
15. The claim by the 1st respondent that an objection with regard to the suit property was heard and determined is also not persuasive for the reason the applicant herein was not a party to the objection proceedings. The respondents have also not demonstrated the prejudice that they will suffer in the event the orders sought are granted.
16. The 1st respondent has deposed that the applicant should have made his objections as per the provisions of section 26 of the *Land Adjudication Act*, which provides: -
 - “(1) Any person named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of adjudication register is published, object to the adjudication officer in writing, saying in what respect he considers the adjudication register to be incorrect or incomplete.
 - (2) The adjudication officer shall consider any objection made to him under subsection (1) of this section, and after such further



consultation and inquiries as he thinks fit, he shall determine the objection”.

17. I find the above provision not relevant in this case for the reason that the objection filed was between Mr. Kipangas Ole Nchoko and another party and not the applicant herein and further the 1st respondent has given the applicant consent to institute proceedings by a letter dated December 18, 2019. Being mindful of the spirit of our constitution under article 50 (1) which provides that: “Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body”, It is only fair that this court allows the applicant a right to present his claim.
18. Arising from the above, I find that the notice of motion application dated July 6, 2021 has merit and the same is allowed in terms of prayer number 2. Each party shall bear its own costs. It is so ordered.

DATED, SIGNED AND DELIVERED VIA EMAIL ON 5TH JULY, 2022.

MBOGO C.G

JUDGE

5/7/2022

In the presence of: -

CA: Timothy Chuma

