



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. E005 OF 2020

MOHAMED SHARIF IDERUS.....PLAINTIFF

VERSUS

MOHAMED ALI HUSSEIN.....DEFENDANT

RULING

1. Before me is a preliminary objection dated 15th January 2021, where the defendant claims that the plaintiff's suit contravenes the mandatory provisions of Section 30 of the Land Adjudication Act in that no consent from the Land Adjudication Officer was obtained prior to filing of the suit and the same should be struck out with costs to the defendant.

2. The matter was heard by way of written submissions. It was argued for the defendants that in plaintiff's pleadings, it is clear that the suit land is within Ngaremara/Gambela Adjudication section. There is even a notification from the demarcation office Ngaremara/Gambela/155592 which confirms that the suit land is within an adjudication section. Section 30 of the Land Adjudication Act bars any court from entertaining civil proceedings concerning an interest in an adjudication section until the adjudication register becomes complete. The only exception is when a party obtains consent in writing from the adjudication officer.

3. As per Section 29(3) of the Land Adjudication Act, the register becomes complete when all appeals to the minister under Section 29(1) have been determined and the Director of Land Adjudication has altered the register to conform with the determination. No consent was filed with the plaintiff, nor has the plaintiff attached anything to show that the adjudication register is complete. The lack of consent is not a technicality but a breach of statutory requirement that renders a suit incompetent and it should be struck out with costs. The defendant relied on the case of **Reuben Mwongera M'itelekwa V Paul Kigea Nabea (2014)eKLR**.

4. The plaintiff has submitted that pursuant to the provisions of Article 159(2) of the Constitution of Kenya, justice shall be administered without undue regard to procedural technicalities. He has a right to defend the ownership to the suit land as provided in Article 40(1) Constitution of Kenya. Thus the preliminary objection should be dismissed as there are conservatory orders restraining the continuation of the adjudication process on various properties which include the suit land herein. He relied on the case of **Muthara Njuri Ncheke Council Of Elders & Another V Committee Of Ngaremara/Gambella Adjudication Section & 2 Others [2019]eKLR**.

5. This preliminary objection is premised on the provisions of Section 30 of the Land Adjudication Act which requires a party to seek and obtain consent from the Land Adjudication Officer before filing a suit in court. The said section provides that : -

“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.”

6. In the case relied on by the defendant the court held in **Reuben Mwongera M'itelekwa V Paul Kigea Nabea (2014)eKLR** that ;

“The requirement for consent to be granted by the Land Adjudication Officer before a suit can be granted is a statutory requirement. It cannot be considered a procedurally technicality. It is not a mere technicality. It is a legal issue.”

7. The plaintiff on the other hand has relied on the case of **Muthara Njuri Ncheke Council Of Elders & Another V Committee Of Ngaremara/Gambella Adjudication Section & 2 Others [2019]eKLR**, to buttress his point that he had the mandate to file this suit. However, in the cited case this court was dealing with the issue of the legitimacy of a corrigendum notice issued pursuant to section 5 of the Land Adjudication Act. In that case, this court gave the following orders;

“1)The adjudication process is to continue in Ngaremara/Gambella adjudication section but only in respect of the areas which were covered in the initial notice issued on 11/3/2016. (emphasize added).

2) A conservatory order is hereby issued restraining the respondents from continuing with adjudication process in the areas which were added in the corrigendum notice of 29/6/2018 until further directions are given by the court or until the suit is heard and determined.”

8. Firstly, the court did not halt adjudication in so far as that process appertains to the original notice. Secondly the conservatory orders issued was in respect of the corrigendum notice of 26.6.2018, which means the areas affected were not part of the adjudication sections. Nowhere in his pleadings has the plaintiff stated that the suit land is not in the area where adjudication is being undertaken. In paragraph 3 of the plaint, he specifically mentions the area as 72 acres in Ngaremara/Gambella Adjudication Section. He even has a parcel number, 5592 which is the notification from the demarcation officer.

9. Further going by the plaint dated 10/11/2020, he is seeking a declaration that he is the owner of the suit land and a permanent injunction against the defendant be issued. It is quite clear that the dispute is purely that of ascertainment of rights and interest in land and as such I do opine that the adjudication officer's consent was required. I find that the Plaintiff has not obtained the relevant consent and hence the lack of it is fatal to the entire suit.

10. I find that the preliminary objection raised by the defendant is merited and the same is upheld. In the circumstances, the entire suit is hereby struck out for non-compliance with the provisions of Section 30 of the Land Adjudication Act. Costs are awarded to the defendant.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 19TH DAY OF MAY, 2021.

IN PRESENCE OF:

C/A: Kananu

M/s Gikundi for plaintiff

HON. LUCY. N. MBUGUA

ELC JUDGE