



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC PETITION NO. 23 OF 2019

PETER CHEGE NGONYI.....PETITIONER

-VERSUS-

LASIT OLE TEEKA.....1ST RESPONDENT

THE COUNTY DIRECTOR OF ADJUDICATION

& SETTLEMENT, NAROK.....2ND RESPONDENT

THE HON. ATTORNEY GENERAL.....3RD RESPONDENT

RULING

The 2nd and 3rd Respondents had raised a Preliminary Objection on points of law stating that the land Adjudication Act Chapter 284 of the Laws of Kenya provide for an elaborate procedure in handling disputes emanating from an Adjudication process and thus argued that the instant suit contravenes Section 29 of the Land Adjudication Act and further that the petition herein is Res Judicata based on the Judgment of the court in Narok ELC JR No. 26 of 2018.

The 2nd and the 3rd Respondents in their Preliminary Objection argued that the Petitioners did not file any Appeal as provided under section 29 of the Land Adjudication Office since what the Petitioners purports to challenge in petition could be addressed vide the Dispute Resolution Mechanism under the Land Adjudication Act.

On whether the Petition is Res Judicata the Respondents argued that the Petitioner had filed Narok JR 26 of 2018 which was determined and the issues raised in the JR Application are the same issues raised in the instant Application and thus the Petitioner is attempting to bring back the already determined issues.

The Petitioner in response to the Preliminary Objection argued that he was not a party to the proceedings before the Land Adjudication Offices, that the 60 days within which to file his appeal had lapsed and therefore the only recovery for him was to file the instant petition. He stated that he came to know of the objection after the 60 days of filing an appeal had lapsed and further that the JR Application was dismissed on the ground that the same was statutory barred.

On the Jurisdiction of the court the Petitioner stated that the court is under a duty to hear any constitutional infringement however small the same is. He stated that his right to a fair hearing was infringed upon because he was not served with the hearing notice to the objection proceedings.

I have considered the Preliminary Objection filed by the 2nd and 3rd respondents and the petitioner's response to the same and the issues for determination before me are whether the suit herein contravenes the provisions of Section 29 of the Land Adjudication Act and whether the suit herein is Res Judicata. It is not disputed by the parties that the suit herein relates to an Adjudication process. The petitioner concedes that he did not file any objection as per the requirements of Section 29 of the Land Adjudication Act and the Applicant failed to exhaust the laid down procedure is fatal.

Section 29 provides

“any person who is aggrieved by the determination of an objection under section 26 of this act may, within sixty (60) days after the date of the determination appeal against the determination of 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”.

The applicant has failed to seek redress and the courts have held that

“Where there is a clear procedure for redress of any particular grievances prescribed by the constitution of an Act of Parliament, that procedure should strictly be followed.....Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for special procedure.

In view of the above, I find that the applicant has not exhausted the laid down procedures under the Act and consequently the Preliminary Objection is upheld and the petition herein is struck for lack of jurisdiction.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK ON THIS 15th DAY OF July, 2021

MOHAMED N. KULLOW

JUDGE

15/7/2021

In the presence of:-

CA:Chuma

Ms Kimiriny holding brief for Maritim for the petitioners

N/A for the respondents