



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MAKUENI**

**ELC CASE NO. 333 OF 2017 (OS)**

**GABRIEL M. MEKA.....PLAINTIFF**

**VERSUS**

**THOMAS KIOKO MANG’OKA.....1<sup>ST</sup> DEFENDANT**

**MUTHIANI KYALO KAVOO.....2<sup>ND</sup> DEFENDANT**

**FRANCIS MUTUNE MUSYIMI.....3<sup>RD</sup> DEFENDANT**

**MUNYAO KYENGO .....4<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is with respect to the Defendants’ Notice of Preliminary Objection dated 27<sup>th</sup> November, 2019 and filed in court on even date.
2. The Preliminary Objection is grounded as follows: -

**1. That the land the subject matter of this suit falls within an Adjudication Section being Kisekini Adjudication Section as per pleadings filed herein.**

**2. Consent under Section 30 of the Land Adjudication Act Cap 284 has not been granted in this cause.**

**3. This court lacks jurisdiction to entertain this matter.**

3. The Preliminary Objection was canvassed by way of written submissions.

4. In their submissions, Makundi and Co. Advocates on behalf of the Defendants cited Section 30(1) of the Land Adjudication Act Chapter 284 of the Laws of Kenya which provides 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.”***

5. The counsel went on to submit that the Plaintiff being aggrieved by the determination of the Land Adjudication Officer regarding the objection that the Plaintiff had lodged filed this suit instead of lodging an appeal to the Minister as provided for under Section 29(1) of the said Land Adjudication Act. The latter section provides as follows;

***“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 determination appeal against the determination to the Minister....”***

6. It was also the counsel’s submissions that the adjudication is yet to become final and that by virtual of Section 30 of the Land Adjudication Act, this court lacks jurisdiction to hear and determined the present suit for want of consent from the Land Adjudication Officer. In support of his submissions, the counsel relied on the case of **Reuben Mwangera M. Iteleka -Vs- Paul Kigea Nabea (2014) eKLR** where it was held thus;

***“There is no argument regarding the fact that the adjudication register for the adjudication section where the suit land is***

*situated had not become final in all aspects under Section 29(3) of the land adjudication act at the time when the suit was filed. An examination of the court records reveals that a consent from the land adjudication officer was not annexed to the suit documents when his suit was filed. The Plaintiff has annexed to his further supporting affidavit a consent from the District Land Adjudication Officer dated 27<sup>th</sup> June 2011. The said consent concerns parcel Nos 44/9, 6/27, 4946 and 6323. Parcel No. 372 is not mentioned. The requirement for consent to be granted by the land adjudication officer before a suit can be filed is a statutory requirement. It cannot be considered a procedural technicality. It is not a mere technicality. It is a legal issue. In accordance with section 30 of the Land Adjudication Act this court and any other court should not entertain any suit filed except with the consent of the adjudication officer until the register for that adjudication section has become final. Section 8(1) of the land consolidation act directs that no recognizance should be taken of any suit appertaining to an adjudication area unless there was prior consent in writing of the adjudication officer. section 8(2) requires officers of all courts to be satisfied that the appropriate consent has been granted by the land adjudication officer before issuing any plaint or other legal process for the institution or continuance of proceedings prohibited by section 8(1).”*

7. Arising from the above, the counsel urged the court to uphold the preliminary objection.

8. On the other hand, the counsel for the Plaintiff referred the court to the ruling delivered by the Land Adjudication Officer on 6<sup>th</sup> July, 2016 and annexed to the supporting affidavit to the originating summons as EMM-2. In the said ruling, the Land Adjudication stated thus;

***“...this tribunal rejects the request of 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff and advises them to pursue their interest in land in question through negotiations with the Defendants or through a court of law on the basis of principle of adverse possession. However, they should continue using the land they have developed as well as their developments within plot No. 916.”***

9. The counsel submitted that the said ruling served a consent under Section 30 of the Land Adjudication Act since it is in writing and it meets all the requirements set out under the said section of the Act. The counsel added there is no particular format set out of how a consent should be.

10. The counsel further submitted that the Plaintiff chose not to appeal against the ruling of the Land Adjudication Officer as it gave him the leeway to approach the court. The counsel urged that the court has jurisdiction to hear and determine this suit.

11. Having read the rival submissions filed by the counsel on record for the parties, it is common ground that plot number 916 Kisekini falls within an adjudication section. It is also common ground that the adjudication register for Kisekini adjudication section where plot number 916 is yet to become final in terms of section 29(3) of the Land Adjudication Act.

12. I have looked at the ruling by the Land Adjudication Officer which the Plaintiff has relied on to file this suit. it partly reads as follows;

***“.....this tribunal rejects the request of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff and advises them to pursue their interest in the land in question through negotiations with the Defendants or through a court of law on the basis of the principle of adverse possession.”***

13. According to Concise Oxford English Dictionary, Twelfth Edition, “advise” is a verb meaning to recommend or to inform about a fact or situation. In short advice is to offer suggestion about the best cause of action to someone. Whereas I agree with the Plaintiff that there is no particular format of how a consent from the Land Adjudication Officer should be, in my view, the Plaintiff having accepted the advice that was rendered to him by the officer, he ought to have sought from the said officer a formal consent in writing as is required under Section 30(1) of the Act. He cannot be heard to say that the ruling by the Land Adjudication Officer served as a consent as it was merely an advise which he was free to accept or reject. As it were, I would agree with the counsel for the Defendants that the Plaintiff filed this suit without first seeking consent of the Land Adjudication Officer.

14. Having failed to seek the said consent, the Plaintiff was obligated to appeal to the Minister as is provided for if he was dissatisfied with the ruling of the objection proceedings that he had filed before the Land Adjudication Officer.

15. I concur with the holding in Reuben Mwongera M’Itelekwa -Vs- Paul Kigea Nabea [2014] eKLR and find that the preliminary objection by the Defendants has merits.

16. In the circumstances, therefore, I hereby proceed to strike the Plaintiff’s suit with costs to the Defendants.

**SIGNED AND DELIVERED AT MAKUENI VIA EMAIL THIS 2<sup>ND</sup> DAY OF SEPTEMBER, 2021.**

.....

**HON. C. G. MBOGO**

**JUDGE**

**Court assistant: Mr. Kwemboi**