



**REPUBLIC OF KENYA**

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

**ELC PETITION NO. 10 OF 2019**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS &  
FREEDOMS UNDER ARTICLE 21 (1), 25 (C), 27 (1) & (2), (35) (1) (A) & (B), 40 (2) (A), 47 (1) & (2),**

**48, 50 (1) & 159 (2) (A) (B) & (E) OF**

**THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF PREAMBLE TO AND ARTICLE 1,2,3,4,10,19,20,23,166,258,259 & 260 OF**

**THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF THE LAND ADJUDICATION ACT, CAP 284, LAWS OF KENYA AND IN**

**THE MATTER OF THE DELEGATED LEGISLATION**

**AND**

**IN THE MATTER OF NDUU ADJUDICATION SECTION PLOT NO. 1820 AND IN**

**THE MATTER OF OBJECTION CASE NO. 63 OF 2017**

**AND**

**IN THE MATTER OF THE DECISION/RULING OF THE LAND ADJUDICATION**

**OFFICER/COMMITTEE OF NDUU ADJUDICATION SECTION DELIVERED ON THE 24/04/2019**

**BETWEEN**

**PRICILLAR MINOO NGUYU..... PETITIONER**

**-VS-**

**SAMUEL MATHEKA MWONGELA..... 1<sup>ST</sup> RESPONDENT**

**THE LAND ADJUDICATION OFFICER**

**NDUU ADJUDICATION SECTION .....2<sup>ND</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This ruling is with respect to the Preliminary Objection (P.O) dated 30<sup>th</sup> October, 2019. It was filed by the Respondents and is grounded as follows;

a) **THAT** this Honourable Court lacks jurisdiction to hear this petition for lack of the mandatory statutory consent to file this case by dint of section 8 of the Land Consolidation Act, Cap 283 and section 30 of the Land Adjudication Act, Cap 284 Laws of Kenya.

b) **THAT** the petitioner did not exhaust the remedies set out in section 29 of the Land Adjudication Act, Cap 284 Laws of Kenya.

c) **THAT** this entire suit contravenes the mandatory provisions of section 13A of the Government Proceedings Act as no notice of intention to sue Government was issued.

2. The Petitioner filed the following grounds of opposition in response to the preliminary objection.

a) **THAT** the Preliminary Objection is misconceived and a waste of Court's time and aimed at misdirecting this Court.

b) **THAT** the Petitioner sought for the consent from the 2<sup>nd</sup> Respondent through a letter dated 4<sup>th</sup> June, 2019 (by her Counsels) which was denied hence this Constitutional petition.

c) **THAT** this is a Constitutional petition regarding the rights of the Petitioner and it in no way offends the provision of the Land Adjudication Act.

3. Directions were given that the preliminary objection be canvassed by way of written submissions. At the time of writing this ruling, only the respondents' submissions were on record.

4. Relying on sections 8 of the Land Consolidation Act, Chapter 283, 29 and 30 of the Land Adjudication Act (*the Act*); they submitted that the Petitioner sought consent of the Adjudication officer but it was denied on the basis that she had lodged an appeal before the Minister. They submitted that she should have appealed that refusal to the Minister instead of filing this petition. They relied *inter alia* on the case of **William Mutuura Kairiba -Vs- Samuel Nkari & 2 Others (2018) eKLR** where the Court stated that;

*“At the outset, I find that this preliminary objection raises important pure points of law. The first ground concerns filing of suits without consent of District Adjudication Officers as required by the law. The second ground concerns the non-exhaustion of legal stipulations.....”*

*The effect of section 30 (1) is that unless the register has become final under section 29 (3) of the Act, all Courts are mandatorily prohibited from entertaining disputes concerning land falling within adjudication areas.”*

5. They submitted that the Act has an elaborate avenue of redress on disputes arising from the adjudication process. They submit that the Petitioner filed an appeal as provided for by section 29 of the Act but she has not pursued it. They contend that any procedure provided by an Act of Parliament should be followed strictly. They relied *inter alia* on the case of; **Speaker of National Assembly -Vs- Karume (1992) KLR** where it was held that;

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

6. They submitted that this court lacks jurisdiction to entertain this petition.

7. The relevant provisions of the Law provide as follows;

1. Section 8 of the Land Consolidation Act;

*“ (1) Subject to the provisions of this section, no person shall institute and no Court whatever shall take cognizance of, or proceed with or continue to hear and determine, any proceedings in which the ownership or the existence under native law and custom of any right or interest whatsoever in, to or over any land in an adjudication area is called in question or is alleged to be in dispute unless the prior consent in writing of the Adjudication Officer to the institution or continuation of such proceedings has been given.*

*(2) No officer of any Court whatever shall issue any plaint or other legal process for the institution or continuance of any proceedings which by virtue of the provisions of subsection (1) of this section are for the time being prohibited, except upon being satisfied that the consent required by those provisions has been given.”*

2. Section 30 (1) of the Land Adjudication Act;

*“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.”*

3. Section 30 (3) of the Land Adjudication Act;

*“Any person who is aggrieved by the refusal of the Adjudication Officer to give consent or make a direction under subsection (1) or (2) of this section may within twenty eight days after the refusal, appeal in writing to the Minister whose decision shall be final.”*

4. Section 26 of the Land Adjudication Act;

*“(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 the 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.”*

5. Section 29 of the Land Adjudication Act;

*“(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.”*

8. From the foregoing, it is clear that the written consent of an Adjudication Officer is a mandatory statutory requirement which cannot be circumvented as long as the provisions are still in force. The Petitioner claims that the consent was withheld for no reason but she has not exhibited anything to show that she has exhausted the appeal process provided in the Act. Accordingly, the adjudication register has not become final and the implication is that this Court is mandatorily prohibited from entertaining this dispute.

9. The upshot is that the preliminary objection is merited. The petition is dismissed with costs to the respondents.

**SIGNED, DATED AND DELIVERED AT MAKUENI VIA EMAIL THIS 2ND DAY OF SEPTEMBER, 2021.**

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**MBOGO C.G.**

**JUDGE**

**Court Assistant: Mr. Kwemboi**