



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

E.LC CASE NO. 20 OF 2019

LABANSON JOSEPH KINYUA MICHUKI.....1ST PLAINTIFF

JEREMIAH MURIMI MICHUKI2ND PLAINTIFF

DOUGLAS MURAGE MICHUKI.....3RD PLAINTIFF

CHARLES MUTUGI MICHUKI.....4TH PLAINTIFF

VERSUS

NATIONAL IRRIGATION BOARD.....1ST DEFENDANT

DEPORAH WANGECHI MICHUKI.....2ND DEFENDANT

RULING

1. This Honourable has been called upon to determine the 2nd Defendant's Notice of Preliminary objection dated 26th August, 2020. The 2nd Defendant has raised the following grounds: -

a. That the suit Rice holding No. 4218 Unit K.6 Karaba Section of the Mwea Irrigation Settlement Scheme- National Irrigation Board is a Law within the scheme whose licence was issued by the National Irrigation Board pursuant to the provisions of the then Irrigation Act Cap 347 Laws of Kenya which Law governs the suit land.

b. That the decision made on 21.2.2019 by the Arbitration/Advisory committee of the 1st Defendant which is a quasi-Judicial body being a creature of a statute can only be challenged by way of Judicial Review Proceedings whose procedure is stipulated under section 8 and 9 of the Law Reform Act and Order 53 of the Civil Procedure Rules, 2010 Cap 21 Laws of Kenya and vide a plaint.

c. That the entire suit filed vide a Plaint dated 15th May, 2019 is a legal muddle, an abuse of the Court process and the Honourable Court lacks the requisite legal jurisdiction to entertain the issues raised in the suit documents.

2. When the matter came up for hearing on 6th May, 2021, the parties recorded a consent that the preliminary objection be canvassed by way of written submissions.

2ND DEFENDANT'S SUBMISSIONS

3. The 2nd Defendant filed their submissions on 6th October, 2021

4. The 2nd Defendant submitted that the land within the great Mwea Irrigation Settlement Scheme is absolutely owned by the National Irrigation Board and the suit land is subject to the provisions of the irrigation Act CAP 347 Laws of Kenya and the National Irrigation regulations made thereunder.

5. She submitted that section 3 of cap 347 establishes the National Irrigation Board which has absolute powers to allocate licences, revoke licences, control the number of settlers within the scheme and to regulate and manage the scheme. Further that the said Act establishes a Committee namely Advisory Committee that assists the board in running the affairs of the scheme and which committee has quasi-judicial

powers and sits and makes decisions as it did on 21.2.2019 over rice holding no. 4218 Unit K. 6 Karaba Section whereby it declared the 2nd Defendant as the lawful successor of the rice holding and proceeded to issue her with a licence.

6. She thus submitted that if the plaintiffs were aggrieved by the said decision the only avenue available to them was to move this Honourable Court for appropriate orders for a writ of certiorari to remove and quash the decision of the 1st defendant by instituting judicial review proceedings under Section 8 and 9 of the Law Reform Act and Order 53 of the Civil Procedure Rules, 2010.

7. She further submitted that the Plaintiff had employed the wrong procedure which has effect of depriving this Honourable Court of requisite jurisdiction to interrogate issues raised in this suit. She thus prayed that it be dismissed with costs.

PLAINTIFFS' SUBMISSIONS

8. The Plaintiffs filed their submissions on 2nd June, 2021.

9. They submitted that the Preliminary Objection had no merit as this Honourable Court can deal with the matter as per section 13 of the Environment and Land Court. They relied on the *Kerugoya ELC Case No. 264 of 2014 Eliud Magundu Njagi Vs the Senior Scheme Manager Mwea Irrigation Scheme & 4 others* whereby they alleged that the said suit was commenced by way of a plaint seeking reliefs of a declaration.

10. They further submitted that their suit should not be dismissed as this would not be in line with *Article 47 and Article 259 of the Constitution and the Fair Administrative Action Act, 2015*. They relied on *Nairobi HC Petition 337 of 2018 Felix Kiprono Mategi Vs the Hon Attorney General & Another*. Thus the preliminary objection lacked merit and prayed that it be dismissed with costs.

ANALYSIS

11. The 2nd Defendant has challenged the decision to determine the suit herein on grounds that the same has been instituted through the wrong procedure.

12. In determining the issue of jurisdiction, the Supreme Court in the case of *Samuel Kamau Macharia & Another V Kenya Commercial Bank Limited & 2 others* held as follows:

“... a court can only exercise jurisdiction that has been donated to it by either the constitution or legislation or both. Therefore, it cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”

13. This Honourable Court's jurisdiction is outlined under **Section 13 of the Environment and Land Court Act No. 19 Of 2011** which

provides that:-

“(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.

(2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes? (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources; (b) relating to compulsory acquisition of land; (c) relating to land administration and management; (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and (e) any other dispute relating to environment and land.”

14. From the plaint dated 15th May, 2019 the plaintiff seeks the following orders: -

a. A declaration that the 1st Defendant's decision made on 21st February, 2019 to transfer the Rice Holding No. 4218 Karaba Section UNIT K. 6 to the 2nd Defendant is null and void and cancellation of the same and to revert the rice holding in the names of the original owner until the succession is filed.

b. An order for a permanent injunction restraining the 2nd Defendant, her servants, agents, assignees or anybody claiming under her from entering, disposing, leasing out, remaining on, cultivating and/or any other way from interfering with Rice Holding No. 4218 Karaba Section UNIT K. 6.

c. Costs of the suit.

d. Any other relief the Honourable Court may deem fit and just to grant.

15. From the prayers sought, it is evident that the subject matter of the suit herein is land whose dispute lies within the jurisdiction of this Honourable Court.

16. The bone of contention is whether a litigant can only challenge the decision of a quasi-judicial body by way of a judicial review or whether the same can be made by way of declaratory suit and whether the same goes to the root of the suit so as to affect the jurisdiction of

this Honourable court.

17. In most instances litigants challenge administrative actions by instituting judicial review proceedings as per **Section 7 of the Fair Administration Action Act 2015** provides that: -

“Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to.....”

18. The above provision is not mandatory in nature which means that an aggrieved litigant is not limited to filing judicial review proceedings only. A litigant who is aggrieved by an administrative action may employ other modes permissible by law to institute a suit to challenge a decision made by a quasi-judicial body.

19. In this case the plaintiff opted to file a declaratory suit. The definition of a declaratory suit was made out in the case of **Johana Nyokwoyo Buti Vs Walter Rasugu Omariba (Suing through his attorney Beutah Onsomu Rasugu) & 2 others [2011] e KLR** whereby the Court of appeal held as follows: -

“A declaration or declaratory judgment is an order of the court which merely declares what the legal rights of the parties to the proceedings are and which has no coercive force – that is, it does not require anyone to do anything. It is available both in private and public law save in judicial review jurisdiction at the moment. The rule gives general power to the court to give a declaratory judgment at the instance of a party interested in the subject matter regardless of whether or not the interested party had a cause of action in the subject matter.”

20. From this authority, it is evident that a litigant can file a declaratory suit requiring the Honourable Court to determine the legal rights of the parties to the proceedings.

21. Further **Order 3 Rule 9 of the Civil Procedure Rules, 2010** provides that: -

“No suit shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make a binding declaration of right whether ant consequential relief is or could be claimed or not.”

22. From the foregoing, I find that a declaratory suit is a permissible mode of instituting a suit challenging an administrative action. Further, the mere filing of a declaratory suit does not go to the root of a suit so as to deny this Honourable Court jurisdiction to determine the legal rights of the parties herein.

CONCLUSION

23. In the foregoing, I find that the Preliminary Objection is without merit and the same is hereby dismissed with costs. It is so ordered.

READ, DELIVERED PHYSICALLY IN OPEN COURT AT KERUGOYA THIS 8TH DAY OF OCTOBER, 2021.

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E.C. CHERONO

ELC JUDGE

IN THE PRESENCE OF:-

1. MS KIRAGU HOLDING BRIEF FOR MS MAGARA

2. MR. IGATI MWAI HOLDING BRIEF FOR KAHIGA

3. MS WANJERI HOLDING BRIEF FOR OMBACHI

4. KABUTA, COURT CLERK.