



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 37 OF 2019

MARGRET MUKONATHO.....PLAINTIFF/APPLICANT

VERSUS

THE HON. ATTORNEY GENERAL.....1ST DEFENDANT/RESPONDENT

DLASO.....2ND DEFENDANT/RESPONDENT

LAND ADJUDICATION OFFICER.....3RD DEFENDANT/RESPONDENT

CHIEF GIITHU LOCAITON.....4TH DEFENDANT/RESPONDENT

NAHASON KARUTI.....5TH DEFENDANT/RESPONDENT

RULING

1. Before this court is an originating summons dated 16th July 2019 brought under order XL, XXXVI rule 1 of the Civil Procedure Rules as well as Sections 4 (4) and 7 of the Limitations of Actions Act seeking the following orders:

(i) Whether the applicant can be deprived her ancestral inheritance family land by Land Adjudication Act cap 284 and be left destitute with nowhere to settle in contravention of section 7 of the Limitation of Action Act cap 22 laws of Kenya.

(ii) Whether the 2nd respondent has deprived the applicant occupied and developed ancestral family land by abuse of office by abetting corruption and misuse of power of office.

(iii) Whether 2nd and 4th respondents have deprived or/and defrauded the applicant duly developed and occupied land by allocating to the 5th respondent by misuse of power of office by abetting corruption.

(iv) Whether the applicant can be deprived of her developed and occupied ancestral inheritance family land after a stay of more than 25 years by forceful eviction of burning the applicant houses and destruction of all properties by 5th respondent herein.

(v) Whether Land Adjudication Act Cap 284 laws of Kenya means 2nd, 4th respondents can defraud or/and deprive the applicant ancestral inheritance family land by misuse of power of office regardless limitation of action act cap 22 laws of Kenya.

(vi) Whether the 5th respondent can be evicted form the applicant land by the order of this hon. Court and be compelled to reconstruct the applicant houses as per her homestead was before.

2. The grounds upon which it is based are as follows:

(a) The applicant has been deprived her developed and occupied ancestral family land by misuse of power of office by 2nd and 4th respondents and allocated to 5th respondent which renders the action to an act of corruption under circumstantial evidence.

(b) The applicant was evicted forcefully and illegally by 5th respondent by dismantling/demolishing the applicant houses on Parcel No. 2411 Giithu Adjudication section.

(c) The applicant is continuing to suffer irreparable loss and damages.

(d) The applicant other members of her family were slashed to death and despite having reported the matter to police at Mikinduri Tigania East – sub county no action has ever been taken in the matter of law.

3. The application is supported by an affidavit and nine witness statements. The applicant has attached a list of documents in her bound bundle of documents filed on **7th April 2021**.
4. On account of the **1, 2 & 3rd** respondents the court has not seen any written replies save for the oral submissions from the bar.
5. Regarding the **4th respondent** he filed a notice of preliminary objection dated **13th March 2021** objecting to the originating summons dated **16th July 2019** on the grounds that the same is misconceived, unmeritorious, in bad faith, bad in law, scandalous, frivolous, and vexatious and an abuse of the court process.
6. The **4th respondent** second point of preliminary ground is that the summons offend section 30 of the Land Adjudication Act and lastly, ground 3 is that the summons discloses no known cause of action.
7. The **5th respondent** opposed the originating summons through a replying affidavit sworn on **17th September 2019** which is supported by annexures marked **NK 1-4**.
8. The **5th respondent's** main point is that the dispute has been handled through the council of elders at different levels whose verdict was the applicant has no land rights in the area and that she has never been in occupation a fact confirmed when the court caused a scene visit and a report was prepared to that effect.
9. The applicant filed an answer to the preliminary objection dated **14th April 2021** which the court has considered.
10. The applicant filed another application dated **20th November 2020** seeking an orders of eviction against the respondent from **Parcel No. 2411 Githu Adjudication section** and an order compelling the respondent to demolish a building which he has built on the disputed land and lastly for the OCS Mikinduri police station to supervise execution of these orders.
11. The application is supported by an affidavit sworn by the applicant which is undated.
12. Directions were given by the court for the two applications and the preliminary objection to be heard together either orally or through written submissions.
13. On **18th May 2021** the counsel for the **4th** respondent orally argued the preliminary objection stating that the matter offends **Section 30 of the Land Adjudication Act Cap 284**; that it is not clear what the applicant wants the court to do; whether it is a judicial review application, a petition, originating summons or an ELC matter. It was further submitted that even if the applicant is questioning the land adjudication process to hear her case, the court is still in the dark hence urged the suit be dismissed.
14. In reply, the applicant submitted she wants the applicant out of her father's land by way of eviction orders. In her view Njuri Ncheke elders had ruled the land was hers yet the **1st, 2nd and 3rd** respondents had forcefully taken it, and given it to the **5th** respondent contrary to the law. She further submitted, she sought explanation from the land adjudication committee, the **4th** respondent and was told to 'buy' a case number so that the land could revert to her .She therefore urged the court to look at her reply to the preliminary objection dated **14th April 2021**.
15. During the hearing, Miss Aketch Advocate sought to know from the applicant if she had any documents to the suit land which the court allowed but she said she had none. The applicant clarified that neither her nor the **5th** respondent had any title deeds.
16. The applicant submitted the adjudication process was ongoing and that arbitration board stage was to start the coming December.

The law of adjudication

17. The Land Adjudication Act herein after the **LAA** is an Act of Parliament to provide for the ascertainment and recording of right and interests in community land and for purposes therewith and purposes incidental therein. **Section 4** mandates the minister to appoint and gazette a land adjudication officer who shall appoint demarcation officers, survey officers and recording officers as his subordinates to assist him in demarcating, surveying and recording interests within the adjudication area.
18. The adjudication officer is mandated to establish an adjudication section within an adjudication area through a notice indicating or defining the area of the adjudication section, manner of ascertaining and recording interests, period of claiming interests and manner of showing boundaries of one's interests.
19. In consultation with a District Commissioner an Adjudication Officer under **Section 6** is mandated to appoint not less than ten persons/residents within the adjudication area to form an adjudication committee for that adjudication section. He is also mandated to appoint an execution officer for that committee to keep records.
20. Under **Section 7** the provincial commissioner of the region wherein lies the adjudication area appoints a panel of not less than 6 and not more than 25 persons resident in the area district.

21. The committee members appointed are obligated to declare their interests in the determination of a claim to an interest in land before the committee or board and shall not vote over any question touching over that land in issue. Each committee or board appoints its chair and its decisions are by $\frac{3}{4}$ of members present.
22. The Adjudication Officer is in charge of and exercises general supervision and control over adjudication. He hears and determines any petitions over acts or omissions of survey officers, demarcation officers, the recording officer and lastly hears any objection to the adjudication register submitted in accordance with **Section 26 of the Land Adjudication Act**.
23. The Adjudication Officer has jurisdiction in all claims made under the Act relating to the interests in land in his area with power to determine any question that need to be determined in connection with such claims.
24. **Section II** mandates the adjudication officers to issue directives to his subordinates, committee and boards relating to the procedure for demarcating, recording of title and survey. He can correct any errors before the register is complete.
25. **Section 12** mandates the adjudication officer while hearing any objection to record all proceedings and as far as possible and practicable follow the procedure directed to be observed in the hearing of civil suits and he may admit any evidence which would not be admissible in a court of law and may use evidence adduced in another claim or contained in any official records, and may call evidence on his own accord. The section provides any proceeding conducted under this Act by an adjudication officer of his subordinates for that purpose is a judicial proceeding for the purposes of **Chapter's X1 and XVIII of the Penal code**.
26. **Part III of the Act** specifies the procedure of making claims and interest over land and manner of attending that process and implication of non-attendance. The adjudication officer is mandated to give a notice before the start of demarcation and recording.
27. **Sections 15 – 19** of the Act specifies other specific duties of an adjudication officer, survey officer and the recording officers. Coming to the function of the committee, once the objections are determined and time for appeals under section 29 has expired, the adjudication register is forwarded to the Director of Land Adjudication under **Section 27**.
28. Any person aggrieved by the determination of an objection under **Section 26** has 60 days to appeal to the cabinet secretary in writing who can delegate his powers through gazette for hearing of appeals.
29. Regarding court action Section 30 stays all civil suits concerning an interest in land in an adjudication section until the adjudication register for that section has become final in all aspects under **Section 29 (3)** of the Act. Any such civil suit can only be commenced or continued with a consent from the adjudication officer.
30. From the foregoing it is quite evident that the process of land adjudication has inbuilt, elaborate and exhaustive mechanisms on when, where and how parties aggrieved may raise and have their issues determined by the relevant players in the land adjudication processes right from the time of declaration of an adjudication area to the time an appeal is heard and determined by the cabinet secretary.
31. Nowhere is a court of law indicated to be one of organs to supervise the process except with a written consent by the land adjudication officer under **Section 30 of the Act**.
32. Turning to the instant case the applicant has not demonstrated that she has exhausted any of the processes above stated.
33. The applicant has not brought before this court any consent authorizing the court to entertain her claim.
34. Moreover the applicant has not deposed she has attempted to participate in any of the above processes and has been denied an opportunity to do so hence the reason she is in court.
35. In ***Speaker of National Assembly vs Karume (1992) KLR 425*** the court held that where there are laid down procedures as per the Constitution and legislation for dispute resolution such procedures are to be strictly followed and enforced.
36. The applicant herein cannot escape that process and if she wants this court to entertain her claim she must play by the rules and bring a consent as set out in the law.
37. In absence of such a consent this court lacks jurisdiction to entertain this suit.
38. The upshot is the preliminary objection dated herein is upheld and the originating summons before the court is struck out with costs to the respondents.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 6TH DAY OF OCTOBER, 2021 IN PRESENCE OF:

Kounyangi holding brief for Miss Aketch for 4th respondent

1st, 2nd and 3rd respondents present in person

Court Clerk: Kananu

HON. C.K. NZILI

ELC JUDGE