



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

ELC NO. 38 OF 2021

KANYARKWAT GROUP RANCH.....1ST PLAINTIFF
JULIUS LONGUOKWANG.....2ND PLAINTIFF
PHILIP CHEMALA RUTO.....3RD PLAINTIFF
LOKORLUKA LOTUNALE.....4TH PLAINTIFF
JOSEPH NGIRUYE.....5TH PLAINTIFF

VERSUS

MERINGIRO LOKADIR JOSEPH.....1ST DEFENDANT
ANTONY MUKELUK TONGOLO.....2ND DEFENDANT
LOMANGIRO INVESTMENT LIMITED.....3RD DEFENDANT
THE LAND REGISTRAR, WEST POKOT COUNTY.....4TH DEFENDANT

RULING

(On the 3rd Defendant's Preliminary Objection)

1. The 3rd Defendant raised a preliminary objection dated **14/10/2021** on this suit. The objection was that this suit is incompetent, bad in law and misconceived for reason of having been filed contrary to the provisions of the **Land Adjudication Act, Chapter 284** of the Laws of Kenya.

2. The preliminary objection was, as directed by this Court, canvassed by way of written submissions. The 3rd Defendant filed his submissions on **27/10/2021** while the Plaintiffs filed theirs on **26/10/2021**. Learned Counsel, Ms. Chebet, who appears for 1st and 2nd Defendants indicated on **26/10/2021** that she did not wish to file any submissions on behalf of her client but would adopt those for the 3rd Defendant. Similarly, Learned Counsel, Mr. Changorok, who appears for the 3rd Plaintiff indicated that he would rely on those filed by counsel for the 1st and 2nd Plaintiffs.

3. On the one hand, in support of the Preliminary Objection on behalf of the 3rd Defendant, Learned Counsel cited **Section 30(1)** of the **Land Adjudication Act** which he argued was the one the suit contravened. It provides as follows:

“(1) 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.”

4. The 3rd Defendant submitted further that the 1st Plaintiff is a Group Ranch hence the provisions of the Land Adjudication Act apply in relation to this suit. In addition, it submitted that the Plaintiffs were required by law to first seek the consent of the Land Adjudication Officer before filing this suit. Counsel supported his submissions with the case of **William Mutuura Kairiba vs. Samuel Nkari & 2 Others Chuka**

ELC No. 08 of 2018. He urged this court to uphold the objection.

5. On the other hand, Learned Counsel for the Plaintiffs submitted that the subject matter of the suit related to land already registered and therefore not governed by the Land Adjudication Act. He submitted that the Plaintiffs who are officials of Kanyarkwat Group Ranch challenge the acquisition and issuance of titles to the 1st to 3rd Defendants. He submitted that the titles were acquired unlawfully and illegally. Counsel was categorical that Kanyarkwat Group Ranch land was registered under the **Registered Land Act, Chapter 300**, Laws of Kenya. It is worth of note that the said statute was repealed by the **Land Registration Act of 2012**. His view was that that being the position, the suit lands do not fall under the Adjudication Section. He further submitted that where the land has been registered under **Registered Land Act** it ceases to be under an adjudication section.

He urged the court to find that the matter is sufficiently guided by the **Registered Land Act**. He relied on the decision of *Mukhisa Biscuit Manufacturing Co. Ltd. v West End Distributors Ltd (1969) EA 696*.

Determination

6. I have carefully considered the content of the preliminary objection, the submissions as well as the law cited. The issues for determination arising therefore are:

- a. **Whether the grounds set out in the Preliminary Objection are points of law**
- b. **Whether this case offends the provisions of Section 30 (1) of the Land Adjudication Act**
- c. **Who bears the costs?**

7. I begin by analyzing the issues, one by one:

(a). Whether the Grounds set out in the Preliminary Objection are Points of Law?

8. *In the case of Mukhisa Biscuit Manufacturing Co. Ltd -vs- West End Distributors Ltd (1969) EA 696*, Sir Charles Newbold defined a preliminary objection as follows:

“A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.”

9. The Defendants argue that by filing this suit without written authority from the Land Adjudication Officer, the Plaintiffs contravened the provisions of **Section 30(1)** of the **Land Adjudication Act** above cited. Counsel relied on the case of **William Mutuura Kairiba vs. Samuel Nkari & 2 Others Chuka ELC No. 8 of 2018** to advance the Defendant’s arguments. From the pleadings and documents relied on in support thereof, the Plaintiffs allege that the first three Defendants obtained titles to the parcels of land in issue, illegally. Thus, in the instant case, this suit is about parcels of land whose titles have been issued. The question is, what is the relationship between the issuance of title to land and the Application of the Land Adjudication Act to any parcel of land that has a title issued?

10. The Defendants argue that the First Plaintiff is a Group Ranch hence its operations fall under the provisions of the Adjudication Act. With due respect, I do not think so. Group ranches used to be registered under the provisions **Land (Group Representatives) Act, Chapter 287** Laws of Kenya (now repealed). The statute was repealed by **Section 45** of the **Community Land Act, Act No. 27 of 2016**. Both statutes had nothing to do with land under adjudication. Such land is governed by the **Land Adjudication Act, Chapter 284** of the Laws of Kenya.

11. Under the **Land Adjudication Act**, the process of ascertainment and recording of rights and interests in Trust Land follows a few simple steps. I summarize them here below.

12. First, the Government, through the relevant Ministry by a County Council to or itself identifies an area of Trust Land whose ownership rights should be ascertained and recorded and makes an order to that effect. That is done pursuant to the provisions of **Section 3** of the **Act**. **Second**, the Ministry declares that areas as an Adjudication Area. **Third**, the Ministry appoints by *Gazette Notice* an Officer to be in charge of the adjudication area. **Fourth**, the Adjudication Officer appoints survey, demarcation and recording officers to be in charge of the adjudication area but under him.

13. Fifth, Adjudication Officer establishes adjudication sections within the area or proceeds with the process as one block of adjudication. In case the officer proceeds with the former, a separate notice must be issued for each adjudication section. **Sixth**, there is establishment of Adjudication Committees and Provincial Arbitration Boards which shall record and make decisions about the ascertainment of the interests, and arbitrate on matters arising from the Committees respectively. **Seventh**, anyone claiming interest in the land shall make such claims to the Recording Officer in accordance with **Section 19** as read with **Section 5(2)** of the **Act**. **Eighth**, objections to claims are made, recorded, handled as in civil proceedings except where the decisions made thereon but if the Recording Officer is unable to determine them, he shall refer them to the Committee which if unable to resolve shall refer them to the Board.

14. Ninth, once decisions are made in accordance with **Sections 20, 21** and **22** of the **Act**, an Adjudication Register will be made in accordance with **Section 23**. **Tenth**, upon completion of the Register, it is published in terms of **Section 25** and any objections made.

Eleventh, if none is made or if made and resolved the Register is finalized under **Section 27** only subject to appeals to the Minister as provided under **Section 29**. **Twelfth**, upon determination of the Appeals in accordance with the law, the Minister shall send the same to the Director of Land Adjudication and the Chief Land Registrar. **Thirteenth**, the Director of Adjudication alters the Register in line with the determinations of the appeals and certify on the duplicate that is final.

15. Fourteenth, he will send it to the Chief Land Registrar who makes final alterations. **Fifteenth**, titles are issued thereafter. At this point the land ceases to be under the **Land Adjudication Act**. Once that happens, the Land Adjudication Officer ceases to have anything to do with the land. He cannot therefore be required to give authority to institute suit. No other person is required to do so, except if the land was owned by a registered company, in which case then a Resolution of the shareholders giving such permission would be required either before or after instituting suit but before the hearing.

16. I find the precedent of **William Mutuura Kairiba vs. Samuel Nkari & 2 Others Chuka ELC No. 8 of 2018** not relevant to the issue raised herein give the procedure summarized above. I thus distinguish it from the facts of the instant case as given in the **paragraph 5** above. The suit land in that precedent was still under adjudication when the parties therein disagreed. They did not explore options available to resolve the dispute but instead rushed to the court without obtaining the necessary consent to institute the suit as required under **Section 30 (1)** of the **Land Adjudication Act**. In that case, the land was still governed by the provisions of the Land Adjudication Act because the adjudication process had not been finalized. The preliminary objection was upheld in that suit. Therefore, the case cited does not apply here and is not helpful to the 3rd defendant's preliminary objection arguments.

(b) Whether this case offends the provisions of Section 30 (1) of the Land Adjudication Act?

17. Counsel for the defendants argued that the land in question falls within Kanyarkwat Group Ranch and therefore is subject to the Land Adjudication Act and for that reason the Plaintiffs should have complied with **Section 30 (1) Act**. To the extent that this court finds that the suit lands in dispute relate parcels of which titles have already been issued under the **Registered Land Act, Cap 300** (now repealed) Laws of Kenya, the **Land Adjudication Act** does not apply. The issuance of titles places the suit lands under a different regime than the **Act**. In the end, this court finds that the Preliminary Objection lacks merit and is consequently dismissed

(c) Who bears the Costs?

18. For the reason that the failed Preliminary Objection was urged without due consideration of the law and facts, the parties who urged it, that is the Defendants, shall bear costs thereof.

19. This matter shall be mentioned on the **20/12/2021** for taking of directions and for further orders.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 7TH DAY OF DECEMBER, 2021

DR. IUR FRED NYAGAKA

JUDGE, ELC, KITALE.