



**REPUBLIC OF KENYA**

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

**ELC APPEAL NO. 127 OF 2019**

**JOHN KABWE .....APPELLANT**

**VERSUS**

**ROSE MWONJIRU ..... 1<sup>ST</sup> RESPONDENT**

**THE DISTRICT LAND ADJUCIATION OFFICER**

**TIGANIA DISTRICT .....2<sup>ND</sup> RESPONDENT**

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

*(Being an appeal from the Ruling of Hon. G. Sogomo (P.M.) delivered on 18<sup>th</sup> July, 2019, in*

*Tigania PMC ELC No. 24 OF 2017)*

**JUDGMENT**

1. The appellant calls upon the court to find the lower court ruling declining jurisdiction erroneous in law as regards the application of the Land Consolidation Act and Land Adjudication Act to the facts as presented by the parties.
2. The appellant's claim was the respondents' alleged fraud, collusion and illegalities out of which the appellant's **Parcel No's 3523 and 2857 Kiguchwa Adjudication Section** was taken away and recorded in the 1<sup>st</sup> respondent's favour by Kigunchwa land committee. He sought for the nullification of the said acts, process and its outcome and for the parcels to revert to him.
3. The 1<sup>st</sup> respondent denied the claim and raised an objection that the suit offended **Section 29 of the Land Adjudication Act Cap 284 Law of Kenya** which the stated that responded the aforesaid section was no bar in the circumstances of the suit. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents did not file any defence subsequent to which an application was filed for leave to enter judgment against them.
4. The appellant filed list of issues for determination dated 15.7.2015, list of witnesses, statements and a list of documents dated 14.11.2014 which included; a consent to sue from the land adjudication officer dated 22.2.2010, 30 days statutory notice to the 3<sup>rd</sup> respondent, proceedings and a decision of District Land Adjudication officer dated 22.5.1999 and 22.5.1997 respectively.
5. The trial court sought for submissions on the issue of jurisdiction to which the appellants filed on 16.7.2019 relying on *M'Arimi Rubwa – vs- Rutere Nkanata [2006] eKLR.*
6. This being a first appeal, the court is enjoined to relook at the entire file and come up with its own findings and conclusion as held in *Selle v. Associated Motor Boat (1968) EA 123.*
7. The trial court held the suit was based on a decision by the land adjudication officer presiding over objection proceedings hence the appellant only recourse was a Minister's appeal.
8. It is trite law that parties are bound by their pleadings and a court must base its findings on pleadings unless parties have left the issue for determination by the court as held in the *Odd Jobs* case.
9. Whereas the powers and mandate of the actors in the land adjudication is the ascertainment and recording of interests over land, the role of the court is clearly defined by the **Land Adjudication Act**. It cannot be said to be too restricted such that any illegalities, acts of collusion and or fraud committed during the process may not be determined by the court. See *Berano M'Mwithiga M'arauki –vs- District Land*

**Adjudication & Settlement Officer Tigania East and West & 2 others [2018] eKLR.**

10. It is trite law there are powers which the land adjudication officer does not possess as well as the Minister such as issuing interim orders, quashing the proceedings and giving redress for the breach of Constitutional rights. See **Daniel Murungi Mwirabua Anampiu –vs- Jeremiah John alias Jeremia Guantai [2019] eKLR.**

11. It cannot have been the intention of the legislature to restrict the court and insulate the adjudication process from the scrutiny of the courts especially where illegalities and breach of rules of natural justice occur. The land adjudication officer is granted power to issue consents to sue, so the court can exercise its supervisory role as held in **Tobias Ochola Osidi & 13 Others –vs- Cyprianus Otieno Ogato & 6 Others [2013] eKLR.**

12. As and when a consent is issued, it is not for the court to second guess why the same has been issued. To do so is to deny a party who has been granted the same, his Constitutional right as to fair hearing.

13. Having said that, in the instant case, there was a valid consent duly issued by the land adjudication officer. As at the time the land adjudication officer issued it, he knew there was the process of appealing to the Minister. He must have given it because he knew the power to appeal is not exclusively granted to the Minister. It is a co-shared power with the courts and especially since the issues raised touched on the excesses of the adjudication committee and its officials in the manner they illegally and unlawfully denied the appellant the right of ownership of his ancestral heritage in total disregard to the recommendations by the elders.

14. The Land Adjudication Act is aimed at ascertaining the rights of the residents of an adjudication area based on customary law. Where the customary law is disregarded and land illegally taken away from the known beneficiaries, surely an aggrieved party cannot be told there is only one channel, the Minister.

15. In the instant case, the pleadings relate to fraud, illegalities and collusion among the respondents out of which the 1<sup>st</sup> respondent was allegedly awarded land belonging to the appellant. Whereas it was based on the decision of the Land Adjudication Officer as a result of a committee proceedings, the court ought to have interrogated the issues through evidence without necessarily determining it as a pure point of law. See **Johnson Mbaabu Mburugu & Another –vs- Mathiu Nabea & Others [2020] eKLR, Francis Murungi M'Ibaya –vs- Paul Kigea Nabea & Others [2020] eKLR.**

16. In the circumstances, my finding is the trial court misapprehended the facts of the appellant's claim and also misapplied the law in reaching the aforesaid decision as facts did not disclose a pure point of law.

17. The appeal is allowed and the suit remitted for hearing on merits.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 1<sup>ST</sup> DAY OF DECEMBER, 2021**

**In presence of:**

Orimbo for appellant

Mr. Riungu for 1<sup>st</sup> respondent

Kieti for 2<sup>nd</sup> and 3<sup>rd</sup> respondents

Court Assistant - Kananu

**HON. C.K. NZILI**

**ELC JUDGE**