



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 295 OF 2017

BENEDICT NGUMA SINGI & 34 OTHERS.....PLAINTIFFS

VERSUS

WILLIAM NYAMAI & 6 OTHERS.....DEFENDANTS

RULING

1. In the Notice of Preliminary Objection dated 25th November, 2017, the Defendants have averred that this court lacks the jurisdiction to entertain the suit in view of the fact that Kivandeni Area of Kanziko Location where the suit land is situated is under adjudication.
2. In his response to the Preliminary Objection, the Plaintiffs have averred that the document in support of the Preliminary Objection, which is the Notice of establishment of an adjudication section of Kivandeni Adjudication Section, Kanziko Location, is dated 16th May, 2017; that the said Notice was to exist for four (4) months from the date of issue and that the Notice of Preliminary Objection was filed on 27th November, 2017, long after the notice had lapsed.
3. The Notice of Preliminary Objection proceeded by way of written submissions. The Defendants' advocate submitted that Section 30 of the Land Adjudication Act expressly ousts the jurisdiction of the court except with the consent in writing of the Land Adjudication and Settlement Officer; that no such consent has been exhibited by the Plaintiffs and that all disputes on ownership of land in an adjudication section ought to be lodged and handled by the Land Adjudication and Settlement Officer.
4. The Plaintiffs' advocate submitted that the Notice declaring the Kivandeni area an adjudication section has never been gazetted; that the said notice was only valid for four (4) months and that the basis of this suit is the findings of the Chief, Assistant Chief and the Board member, Lands, dated 16th November, 2016.
5. The Plaintiffs commenced this suit by way of a Plaint dated 1st July, 2017. In the Plaint, the Plaintiffs averred that they have been in occupation of the suit land since 1894; that they were all born on the suit property and that it is their great grandfather who was the first one to settle on the land.
6. The Plaintiffs further averred that the suit land has never been demarcated to date; that the Surveyors from the government visited the land with a view of demarcating it and that the Plaintiffs were summoned by the Chief, the Deputy County Commissioner and that they were opposed to the dispute being handled by any other body other than the Environment and Land Court.
7. In their prayers, the Plaintiffs prayed for a declaration that they are entitled to exclusive and unimpeded right of possession and occupation of the suit property and for the court to overturn the findings of the Deputy Commissioner.
8. The Plaintiffs have admitted in their Plaint that the government officials were in the process of demarcating the suit land, which has never been demarcated. Indeed, the only demarcation known in law in respect of Trust Land or Community Land is the one carried out under the Land Adjudication Act.
9. The Defendants have produced in evidence the letter by the Land Adjudication Officer of Mutomo/Ikutha Adjudication Areas dated 16th May, 2017. In the said letter, the Land Adjudication Officer gave notice of the establishment of an adjudication section known as Kivandeni Adjudication Section, Kanziko Location, Kanziko Division, Ikutha Sub-County. The letter *inter-alia*, provided as follows:

“Under Section 5 of Land Adjudication Act, Cap 284, I the Land Adjudication Officer, Mutomo Adjudication Area do hereby declare Kivandeni Sub-location, Kanziko Location, Kanziko Division, Ikutha Sub-County to be an adjudication section of which the perimeter boundaries are as follows:

The boundary commences at Kwa Embae Redeemed Gospel Church, the boundary turns Eastwards direction along Embae-

Mwanianga road upto Kwa Mutambuki Mbindu homestead and it turns Westwards upto Kathonga hills and then the boundary turns Southwards upto Manzui hills. Then the boundary turns Eastwards upto Assistant Chief's office Mwangala. Then it proceeds to Mwangala Primary School upto Muvuko River then turns Southwards along Kyanyaa adjudication section boundary (external boundary). The boundary turns upto Mwanzia Mutinda homestead and then it turns Westwards upto Mutunga Munuve's homestead (MCA) and then turns up to Kathini river. The boundary turns Northwards along Kathini river upto Malamuni then it turns Northwards along Kanziko Mutomo road upto point of commencement.

All the rights and interest in land within this Adjudication Section will be ascertained and recorded in accordance with the provisions of the Land Adjudication Act and any person claiming any such right or interest is requested to present his/her claim to the recording officer either in person or by duly authorized agent within a period of four (4) months from the dates of this notice

In accordance with Section 30 of the above Act, with effect from the date of this notice except with prior consent in writing of the land adjudication officer, no person shall institute and no court shall hear any proceedings whatsoever in which any right or interest in land within this Adjudication Section until adjudication register has become final in all respects under Section 29 of the Act and 284 Laws of Kenya."

10. The Plaintiffs have not denied that the suit land is within the defined adjudication boundaries. Indeed, the Plaintiffs have admitted in the Plaint that the suit land was being demarcated by the "government officials" thus the dispute.

11. The letter by the Land Adjudication Officer dated 16th May, 2017 further stated as follows;

"In accordance with Section 30 of the above Act, with effect from the date of this notice except with prior consent in writing of the Land Adjudication Officer, no person shall institute and no court shall hear any proceedings whatsoever in which any right or interest in land within this Adjudication Section until adjudication register has become final in all respects under Section 29 of the Act and 284 (sic) Laws of Kenya."

12. Indeed, Section 30 (1) of the Land Adjudication Act ousts the jurisdiction of the court to handle disputes in respect to land which is still undergoing adjudication except with the consent in writing of the Land Adjudication and Settlement Officer. The said Section states 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."

13. Section 30(3) of the Act provides that any person who is aggrieved by the refusal of the adjudication officer to give consent or make a direction under sub-section (1) or (2) may, within twenty one (21) days after the refusal, appeal in writing to the Minister whose decision shall be final.

14. The evidence before me shows that the Land Adjudication Officer did establish an adjudication section pursuant to the provisions of Section 5 of the Land Adjudication Act. The suit property falls within the established adjudication section. Consequently, the Plaintiffs required the consent of the Land Adjudication Officer before filing any dispute relating to the suit property in this court. Having not obtained a written consent of the Land Adjudication Officer, I find the Preliminary Objection dated 25th November, 2017 to be meritorious.

15. For those reasons, the Plaintiffs' Plaint dated 1st July, 2017 is struck out with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 31ST DAY OF JANUARY, 2020

O. A. ANGOTE

JUDGE