



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC (O.S.) NO. 27 OF 2019

PATRICK MUGAMBI THAMBU.....1ST APPLICANT

JOHN THURANIRA MICHEAL.....2ND APPLICANT

JULIUS BUNDI KARITHI.....3RD APPLICANT

GEODFREY MICHUBU.....4TH APPLICANT

JACKSON KIMATHI5TH APPLICANT

VERSUS

ATTORNEY GENERAL.....1ST RESPONDENT

DLASO (Demarcation land adjudication survey officer).....2ND RESPONDENT

LAND ADJUDICATION OFFICER.....3RD RESPONDENT

REM MUTARABI JULIUS.....4TH RESPONDENT

RULING

1. The applicants herein filed Originating summons dated 29th May 2019 claiming rights of land in GIITHU Adjudication Sections No. 2318, 2305, 2393, 2661 and 2313. They claim that they were wrongly evicted from their ancestral family land by the Respondents and at the time their properties i.e. banana plantation, water pipes, and miraa trees were destroyed. Similarly, they were locked up by the Respondents at Kangeta Police station.

2. They further alleged that the 4th Respondent did not purchase the land from any of the family members hence any transfer to him by the 3rd Respondent was fraudulent and illegal in the circumstances.

3. They rely on the following list of documents in support of their averments i.e. **a) Complaint letter to the land adjudication officer dated 23/10/2018, b) Notice of intention to sue addressed to the 1st Respondent, c) Complaint against misuse of power addressed to the ODPP., d) Land parcel documents of parcel numbers No. 2318, 2305, 2393, 2661 and 2313. e) Photograph of the land.**

4. The 4th Respondent opposed the application through a Replying affidavit dated 6/08/2019. He averred that he bought the land from **Samuel Mbili Mugwika** initially **Githu Adjudication Section P/No. 1989 (comprised of parcel No. 2320, 2319 & 2314)** measuring 20 acres at a cost of Kenya shillings Four million (Kshs. 4,000,000/=) vide Sale Agreement dated 29/06/2017.

5. That before the sale, he conducted due diligence and he became aware that the applicants ancestral land is in Muthura and that they were brought to guard the suit parcel by Samuel Mbili Mugwika due to their family relations; their father's being brothers.

6. That in **Maithene African Court civil case No. 109 of 1967**, a case pitting the applicants father and Samuel Mbili Mugwika, the court found that Samuel Mbili was the rightful proprietor of the land. That in the year 2011 Samuel Mbili lodged case against 13 defendants before the lands Committees in Tigania District, Tigania East and Central Divisions and in relation to Githu Adjudication Sections 2323, 2321, 1981, 2315, 2307, 2314, 2319, 2317, 2320, 1987, 2316, 2285 & 2312 which was determined in his favour.

7. That when he bought the land, the applicants father did not have any problem and it was only later that the applicants resolved to destroy his properties and development to which he made several reports to the police station and the applicants have since been charged.

8. Through a ruling dated 10/12/2019 this court expunged from the Record the 2nd Applicants affidavits dated 7/10/2019 & 2/10/2019 the same being filed without leave of the court. Both parties also agreed that they shall rely on the documents on record to supports their averments. At the request of the applicants the court on 22/1/2020 directed that a site visit be conducted on the suit premises.

9. The suit premises in dispute are registered under the Land Adjudication Act, where there are elaborate dispute resolution mechanisms provided in various stages. The functions of the adjudication committees are provided for under section 20 & 21 of the Act where it is stipulated as follows;

“20. Functions of committee

The committee appointed for an adjudication section shall—

(a) adjudicate upon and decide in accordance with recognized customary law any question referred to it by the demarcation officer or the recording officer;

(b) advise the adjudication officer or any officer subordinate to him upon any question of recognized customary law as to which he has sought its guidance;

(c) safeguard the interests of absent persons and persons under disability;

(d) bring to the attention of officers engaged in the adjudication any interest in respect of which for any reason no claim has been made;

(e) assist generally in the adjudication process.

21. Decisions of committee

(1) If a committee is unable to reach a decision on a matter before it, it shall refer the matter to the arbitration board for decision. (2) The adjudication officer may require the committee to reconsider any decision which it has made. (3) Any person named in or affected by a decision of the committee who considers the decision to be incorrect may, within fourteen days after the decision, complain to the executive officer of the committee, saying in what respect he considers the decision to be incorrect.

(4) Upon receipt of a complaint under subsection (3) of this section, the executive officer of the committee shall refer it with all the particulars of the case to the executive officer of the board, who shall submit it to the board”.

10. Section 22 provides for the Functions of arbitration board where it is stipulated that;

“The board shall hear and determine any matter referred to it or complaint made to it under section 21 of this Act.”

11. Section 26 makes provision for the Objection to adjudication register. There in, it is stipulated that;

“(1) Any person named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer in writing, saying in what respect he considers the adjudication register to be incorrect or incomplete.

(2) The adjudication officer shall consider any objection made to him under subsection (1) of this section, and after such further consultation and inquiries as he thinks fit he shall determine the objection.”

12. The right of appeal to the minister is also provided for under section 29 of the aforementioned Act.

13. It is clear from the above citation that the Land Adjudication Act has a clear mandate and procedure to resolve disputes arising from the Act. The applicants herein have also not sought a consent from the land adjudication officer before filing this suit as is provided under section 30 of the Act. Without this well-established procedure being adhered to, this court cannot assume jurisdiction to hear and determine the matter.

14. In The Owners of Motor vessel “LILIAN “S” Vs. Caltex Oil Kenya Ltd (1989) 1 KLR 1, as follows:-

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence and court of law downs it tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

15. In the case of Samuel Kamau Macharia & Another Vs Kenya Commercial Bank & 2 Others [2012] eKLR the Supreme Court of Kenya held as follows;

“A court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondent in his submissions that the issue as to whether a court of law has jurisdiction to entertain a matter before it is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings...where the constitution exhaustively provides for the jurisdiction of a court of law, the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.”

16. In Benjamin Okwaro Estika Vs Christopher Anthony Ouko & Another [2013] eKLR the Court of Appeal held;

“That being so, the mandatory requirements of section 30 (1) had to be complied with i.e. consent of the Land Adjudication Officer has to be obtained before filing a case in respect of a dispute on land in that adjudication section before the court could be clothed with jurisdiction to hear it. From what we have discussed above, it will be clear that we are in full agreement with the learned judge that the court had no jurisdiction to entertain the matter that was before him as no consent had been obtained.”

17. As at now, I am dealing with the merits of the application which is anchored on the pleadings of the applicants. On the basis of the material placed before me, the court does not have jurisdiction to grant the prayers in the application. The applicants have also been put on notice that without the consent of the Land Adjudication officer, their suit faces imminent dismissal, not to mention that they would also have to demonstrate that they did exhaust the dispute resolution mechanisms available under the relevant statute.

18. All in all, I find that the application is not merited. Each party bears their own costs of the application.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 26TH FEBRUARY, 2020 IN THE PRESENCE OF:-

C/A: Kananu

J.G Gitonga holding brief for Ms. Aketch for 4th respondent

Kiongo for 1st – 3rd respondents

1st applicant

2nd applicant

4th applicant

5th applicant

HON. LUCY. N. MBUGUA

ELC JUDGE