



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL SUIT NO. 6 OF 2009

KANAMPIU M'RIMBERIAPLAINTIFF

VERSUS

JULIUS KATHANE.....1ST DEFENDANT

ROBERT MUTHEE 2ND DEFENDANT

DISTRICT LAND ADJUDICATION AND SETTLEMENT

OFFICER – TIGANIA.....3RD DEFENDANT

ATTORNEY GENERAL.....4TH DEFENDANT

JUDGMENT

Back ground

1. This case is a classic example of how sometime confusion reign supreme in the adjudication arena due to unending litigation. The land adjudication/demarcation process has dragged on for years in Meru region, and in the intervening period conflicts of great magnitude take the center stage. These conflicts are literally handed down from one generation to the next.
2. In this suit, there are accusations and counter accusations spanning decades whereby plaintiff even claims he was jailed in **1965!!** For a period of 11 years all because of the suit land. The dispute has gone through **the committee stage, the arbitration board, the elders (wazees), the A/R objection proceedings, the minister stage** and finally, the dispute landed before this court.
3. The suit land was initially identified as **parcel no. 1710 measuring 9 and a half acres**. Later **parcel no.1711, was hived off from this parcel 1710. Parcel no.6220 is also another suit land. All these parcels fall under MBEU1 ADJUDICATION SECTION.**
4. The history of this land is that initially it was unregistered land. Such land did not lie idle. It had owners. It could be used as an economic commodity by sale, it was sub divided and also inherited by generations. According to plaintiff, the suit land was gathered by his mother **Catherine Nchulubi** as an unregistered land in 1950. Then in **1963**, one **Zakaria Wachira** settled in the vicinity having been given land by one **M'Linturi**. In 1966, Wachira lodged a criminal case against the plaintiff which resulted in plaintiff being jailed for 11 years. When Plaintiff was released in 1976 or there about, he found that his mother had died and that his land had been taken by Zakaria Wachira. The land was then known as parcel no. **1710** consisting of **9 and a half acres**. Apparently, **Zakaria Wachira** had allegedly sold two acres out of 1710 to the 1st defendant and this portion was known as **parcel no. 1711**. Somehow there was also another portion of land being claimed by plaintiff, the same being parcel no 6220.
5. At this juncture, it is necessary to also give 1st defendant's version of the history of the dispute. He avers that he bought parcel 1711 from Wachira, and that he also owns parcel 6220, which he gathered.

Litigation History

6. Records so far availed indicate that there was an **Arbitration board case no 31 of 1987** for **parcel no.1711** where plaintiff herein was the plaintiff while first defendant herein was the defendant. Plaintiff won the case. Then there was **Arbitration board case no 1 of 1989** for **parcel no.1710**. It was between plaintiff herein (as the plaintiff), while defendant in that case was one Wachira Mugo. The Judgment is rather vague. For the parties to have gone before the arbitration board, there must have been the committee stage proceedings. A high court matter was also filed by plaintiff against the present 1st defendant as **H.C.C.NO. 218 OF 1990** in respect of parcel 1711. The case was dismissed for want of consent under **section 30** of the **land adjudication Act**.

7. There are also **proceedings of 1995** in respect of **parcel 6088**, which land allegedly is the one known as **6220**. It is not clear under which stage of dispute resolution mechanism or under which law the proceedings fell. The Judgment thereof is also not clear.

8. Then there is the **A/R Objection proceedings no. 706 and 710** in respect of parcel **no. 6220 and 1711**, which proceedings sparked off the filing of this suit. The 1st defendant herein won the case. Apparently, the plaintiff herein was dissatisfied with the decision and he appealed to the minister.

The pleadings

9. The suit was instituted by the plaintiff Kanampiu M'Rimberia by way of an amended plaint dated 20th November 2012. He averred that he has always been in occupation of land parcels Nos. **6220 and 1710** which he has extensively developed as the owner. That on or about 11th April 2006, the 1st and 3rd defendant colluded to fraudulently excise 2 acres out of **P/No. 1710** which measured 3 acres and registered it in the name of the 1st defendant as **P/No. 1711**. The one acre which remained was recorded to the 2nd defendant. Similarly, the 1st and 3rd defendants caused **P/No. 6220** measuring **1 ½ acres** to be registered in the 1st defendant's name. The particulars of fraud captured in the plaint are:

- a) **Hearing the dispute over the suit lands in the absence of the plaintiff**
- b) **Condemning the plaintiff in his absence and refusing to wait for his witnesses**
- c) **Colluding and conniving to grab the plaintiff's land even after the plaintiff won L.R. NO. 6220 from the County Council of Meru.**
- d) **Excising 2 acres from the original P/No. 1710 and registering the said 2 acres in the name of the 1st defendant as P/No/1711 and replacing the plaintiff's name with that of the 2nd defendant as the recorded owner of the land P/No. 1710 which remained with 1 acre.**

10. The 1st defendant filed his **statement of amended defence** on 8 October 2013 denying the allegations made by the plaintiff. He asserted that after the 3rd defendant heard his objections and visited the scene, he ordered parcels No. 1711 and 6220 to be registered in his name of which he took possession of, developed and utilized the same. The plaintiff was given 60 days to appeal to the Minister of **which he did and the said appeal is pending for determination.**

11. The 3rd and 4th defendants filed their defence on 21st May 2015 where they too denied in *toto* the allegations made by the plaintiff. They asserted that if there were any dealings by themselves with regard to the suit lands the same was procedural, lawful and in exercise of their statutory powers and functions. They averred that the suit offends the express provisions of **Section 29 and Section 30 of the Land Adjudication Act, CAP 284 of the Laws of Kenya.**

12. The 2nd defendant who is apparently a son of Zakaria Wachira (the one who sold land to 1st defendant) did not file any defence. On 3.10.2017, the court was informed that this 2nd defendant had died. Plaintiff proceeded to abandon the case against him.

The Evidence

13. The plaintiff Kanampiu M'rimberia testified as **PW1** where he adopted his statement filed on 20th January 2014 as his evidence in chief. He produced his documents filed in court on 20th January 2014 as exhibits 1 to 23. He stated that he grew up on the suit lands and has extensively developed the same. In 1963 their neighbour by the name M'Linturi came from Manyani prison with his friend called Zacharia Wachira who by that time had no land in Mbeu. Thus, M'Linturi gave Wachira his land and went away. In 1966 Wachira made an accusation against plaintiff and his brother and the two were jailed for 11 years. When plaintiff was released from prison 11 years later, he came back to find that their mother had passed on and Wachira had taken their land.

14. In 1987 plaintiff accused Wachira to the chief's elders where Wachira agreed that the land belonged to the plaintiff and he promised to give it back. When adjudication started in Mbeu concerning parcel No. 1710, plaintiff discovered that Wachira had given the 1st defendant a portion of the land which was registered as parcel No. 1711 and the remaining part was registered to the 2nd defendant as No. 1710.

15. Plaintiff admits that as of now parcel Nos. 1711 and 6220 are in the name of the 1st defendant. He however contends that he did not conduct any case in the A/R Objection proceedings because the adjudication officer failed to record his evidence. He sued the adjudication officer for failing to give him a hearing. **The decision of the Land Adjudication Officer (LAO) was that the plot No. 1711 be given to the 1st defendant of which he was not satisfied with the decision, because he was asked to proceed with the case but his witnesses were not ready.**

16. For land No. 6220, plaintiff avers that he sued Meru County Council where the land was No. 6088 of which he won. But the land was registered under the name of the 1st defendant.

17. **DW1, Julius Kathanje, the 1st defendant** relied on his statement dated 30th September 2013 as his evidence. He produced his list of documents filed on 2nd October 2013 as D Exhibit 1 – 14. He affirmed that he bought the Suit Lands from Zacharia Wachira who had bought land No. 1711 from Joel M'Aritho. He does not agree that the land belonged to the plaintiff. For P/No. 6220, he says he gathered this land. He states that he instituted the objection proceedings with regard to parcels No. 1711 and 6220, of which he was awarded these parcels of

land. The plaintiff appealed to the Minister but when he was summoned he apparently failed to attend even after a chief was sent to get him.

18. **DW2, Florence Gacheke Wachira** is wife of Zacharia Wachira. She adopted her statement dated 30th September 2013 as her evidence. She affirmed that land parcel No. 1710 belonged to her husband who had then sold a portion of two acres to 1st defendant. This portion became parcel no.1711.

19. The state (the District Land adjudication and settlement officer and Attorney General) did not tender any evidence.

Submissions

20. I have only seen submissions of the plaintiff, where he has reiterated what he had stated in his evidence. He further submitted that he has suffered great miscarriage of justice perpetuated by the 1st defendant in collusion with the 2nd and 3rd defendants which resulted in the loss of his parcels of land. He submits that he was not accorded a fair hearing during the objection case. He relied on the cases of **H.C.C.C Nairobi Civil Case No. 487 of 2015 Sinohdro Corporation vs Equity Bank & Another** and **Meru HCCC JR No. 90 of 2011 Joshua Mukuyu M'Ikiara vs Land Adjudication Officer & 3 others.**

Determination

21. I have carefully and thoroughly perused the record, the evidence and submissions. I find that first and foremost I must establish whether this court has the mandate to determine the dispute. Jurisdiction is everything and without it, a court has no power to take any further step. This was rightly expressed in the *locus classicus* case of **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1** where Justice Nyarangi of the Court of Appeal held 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. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

22. The suit lands are parcels that came about as a result of the adjudication process. The first page of the A/R Objection proceedings No. 706 and 710 indicate that the applicable law was the **LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA**. This statute sets out the process and procedure to be followed by the parties in order to have their claims recorded and registered. It also sets out the procedure to be followed by any party who has been or is aggrieved by the adjudication process at various stages of the dispute resolution mechanism.

23. **Section 13 (1)** of the aforementioned Act provides that:-

“1) Every person who considers that he has an interest in land within an adjudication section shall make a claim to the recording officer, and point out his boundaries to the demarcation officer in the manner required and within the period fixed by the Notice published under section 5 of this Act.”

24. **There is a committee stage provided for under section 20 and 21 of the aforementioned act. The dispute herein must have gone through this stage even if proceedings thereof have not been availed since the case had progressed to the arbitration stage.**

25. **Section 22 of the same Act provides for dispute resolution mechanism before the arbitration board of which this dispute was lodged in case No 31 of 1987 for parcel no. 1711, and case No 1 of 1989 for parcel no.1710.**

26. Following the adjudication of all claims through the aforementioned stages, an adjudication register which comprises the demarcation map and the adjudication record is published and any person with an objection to the adjudication register under **Section 26 of the said Act** has a period of sixty (60) days to make the objection. The aforementioned section stipulates as follows:

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.

22. **Section 29** provides that any person aggrieved by the determination of the adjudication officer under **Section 26 of the Act** has an opportunity of appealing to the Minister. **Section 29** stipulates as follows:-

“Any person who is aggrieved by the determination of an objection under section 26 of the Act may, within sixty days after the date of the determination, appeal against the determination to the minister by:-

a. Delivering to the minister an appeal in writing specifying the grounds of appeal, and

b. Sending a copy of the appeal to the Director of Land Adjudication, and the minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.”

27. According to the evidence presented, the A/R objection case was determined in favour of the 1st defendant. The plaintiff herein was aggrieved by that decision of the District Lands and Settlement Officer, so he appealed to the Minister of which the matter is still pending. The plaintiff testified that he had not followed up the case before the minister for he was afraid to lose his land. **DW1** stated that plaintiff had failed to appear for the hearing even after being called by the chief.

28. The Land Adjudication Act is a self-contained statute that has detailed procedure of how matters are to be conducted and at what point the jurisdiction of the court is to be invoked. The Supreme Court in the Case of **Samuel Kamau & Another v. Kenya Commercial Bank and two others – Sup. Ct. Civil Application No. 2 of 2011** opined 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 respondents in his submission 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.”

29. In the case of **Tobias Achola Osindi & 13 others versus Cypriano Otieno Ogalo & 6 Others, H.C.CNO 4 OF 2011 KISII, Okongo J** made an elaborate statement regarding the dispute resolution mechanisms in adjudication processes. I find it necessary to give a lengthy extract from this case in order to put the whole adjudication process in a clear perspective.

“The whole process leading up to the registration of a person as a proprietor of land as aforesaid is undertaken by the Adjudication Officer together with other officers appointed under the Act for that purpose. It follows from the foregoing that once an area has been declared an adjudication area under the Act, the ascertainment and determination of rights and interest in land within the area is reserved by the law for the officers and quasi-judicial bodies set up under the Act..... The Act has given full power and authority to the Land Adjudication Officer to ascertain and determine interests in land in an adjudication area prior to the registration of such interest. As I have mentioned above, the process is elaborate. It is also inclusive in that it involves the residents of the area concerned. I am fully in agreement with the submission by the advocates for the defendants that the Land Adjudication Officer cannot transfer the exercise of this power to the Court. The court has no jurisdiction to ascertain and determine interests in land in an adjudication area. In my view, the role of the court is supposed to be supervisory only of the adjudication process. The court can come in to ensure that the process is being carried out in accordance with the law. The court can also interpret and determine any point or issue of law that may arise in the course of the adjudication process. The court cannot however usurp the functions and powers of the Land Adjudication Officer or other bodies set up under the Act to assist in the process of ascertainment of the said rights and interests in land. Due to the foregoing, a consent issued by the Land Adjudication Officer under section 30 of the Act does not entitle any party who has an interest in land within an adjudication area to bring up to court for determination issues which should be determined by the adjudication officer or through the dispute resolution machinery laid out in the Act”.

30. I do sympathize with plaintiff for having gallantly soldered on for decades in his quest for justice. But again, the law is there for a purpose. This is a situation whereby the plaintiff simply shunned the appeal proceedings before the minister, yet the decision of the minister is **the final stage of determination of rights and interest in land under adjudication process.**

31. The bottom line of this matter is that the rectification of the register pursuant to the A/R Objection proceedings is grounded in law under section 26 of the Act. As a matter of fact, under section 27 of the Act, the register is taken to be final **ONLY SUBJECT TO APPEAL**. The adjudication officer is required to send the adjudication register with particulars thereof to the Director of adjudication for onward transmission to the chief Land Registrar to facilitate the issuance of title deeds. It was therefore not open for the plaintiff to opt to come before this court. Recourse lies with the Minister.

32. My conclusion is that this court has no jurisdiction to determine the dispute at hand. The suit is hereby dismissed. Taking into account the treacherous odyssey of the litigation herein, I direct that each party bears their own costs of the suit.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 13TH FEBRUARY, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Gikonyo holding brief for Mwiti for plaintiff

Muthamia holding brief for Mutegi for defendant

Plaintiff present

Kiongo for 3rd and 4th defendants

HON. LUCY. N. MBUGUA

ELC JUDGE