



Yator & another v Biwott & another (Environment and Land Case E002 of 2024) [2025] KEELC 4792 (KLR) (26 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4792 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT AND LAND CASE E002 OF 2024**

**L WAITHAKA, J
JUNE 26, 2025**

BETWEEN

PHILEMON KIMUTAI YATOR 1ST PLAINTIFF

THOMAS KITUM RUNGUNO 2ND PLAINTIFF

AND

JACOB BIWOTT 1ST DEFENDANT

ASSISTANT COUNTY COMMISSIONER - KAPSOWAR 2ND DEFENDANT

RULING

1. By a plaint dated 16th May, 2024 the plaintiffs instituted this suit seeking judgment against the defendants for an order of eviction against the 1st defendant; an order compelling the 1st defendant to hand over vacant possession of the land described as Cherelabei land located at Kapsowar and belonging to Kapsaiya clan; a permanent injunction restraining the defendant, his servants, workmen and agents from entering, trespassing, cultivating on and/or from erecting or causing to be erected thereon any structures and/or ploughing the aforementioned land or from in any way interfering with the plaintiffs' use and enjoyment of that parcel of land known as Cherelabei land located at Kapsowar and belonging to Kapsaiya clan; general damages for trespass; costs of the suit and interest.
2. As can be discerned from the averments/contentions in the plaint, the suit is premised on the grounds that the suit land belongs to the plaintiffs and to clan members of the plaintiffs' clan, Kipsaiya clan; that the 1st defendant who is a proxy of Kaptobon clan, has instigated the 2nd defendant to interfere with their proprietorship and occupation of the suit land by summoning them to illegal adjudication of the land dispute between them and that the dispute concerning the suit land was conclusively adjudicated upon by the courts.



3. Terming the actions of the defendants, particularly the 1st defendant, complained of trespass to land, the plaintiffs lament that their efforts to get the defendants to stop their activities complained of have been futile.
4. The 1st defendant filed a statement of defence, dated 23rd September 2024, denying the allegations levelled against him. In particular, the 1st defendant denies the plaintiff's contention that he's a proxy of Kaptobon clan. He also denies the allegation that the suit land has been adjudicated upon in courts of law before. The 1st defendant further denies having interfered with any decree of court and contends that none exists in respect of the suit land.
5. The 2nd defendant, through the office of the Attorney General, entered appearance but did not file a statement of defence within the time stipulated in law and at all [none was in the court record at the time of writing this ruling].
6. Parties to the suit complied with Order 11 and the suit was set down for hearing.
7. On 29th November, 2025 when the suit came up for hearing, Counsel for the 2nd defendant informed the court that they had information that the area in which the suit land is located/situated had been declared an adjudication area and that it was gazetted as such on 28th April, 2004.
8. The County Surveyor for Elgeyo Marakwet, Philip Kipchumba, informed the court that the area where the suit land is situated lies between Embosaita and Maina registration sections, which sections are under adjudication.
9. Counsel for the plaintiffs informed the court that the plaintiffs are aware of committees that were formed but were not aware of the survey. She requested for a mention date to enable her confirm that the suit land is within Kapsowar B adjudication area.
10. When the matter came up for mention, Counsel for the plaintiffs informed the court that they were served with the notice allegedly declaring the area within which the suit land is situated an adjudication area but the document served on them is illegible. She also informed the court that she was unable to get a copy of the gazette notice. Consequently, she had written to the 2nd defendant to file an application to strike the suit.
11. Arising from the foregoing, the 2nd defendant filed the notice of motion dated 27th February 2025 seeking dismissal of the plaintiff's suit for want of jurisdiction of this court to hear and determine it.
12. The application is premised on the grounds that the suit offends the express provisions of section 30 of the [Land Adjudication Act](#) [LAA], Cap 284 of the Laws of Kenya in that the subject matter of the suit falls within an adjudication section being Kapsowar B adjudication section; that consent under section 30 of [LAA](#), Cap 284 Laws of Kenya and section 8 of the [Land Consolidation Act](#), Cap 283 Laws of Kenya, was not granted; that the plaintiff had not exhausted alternative remedies provided in law making the suit premature and a proper candidate for striking out. Further, that the suit was improperly brought as a representative suit without leave of the court and in violation of Order 1 rule 8 of the [Civil Procedure Rules](#); that no authority to swear affidavits had been signed and filed by the other members to permit the plaintiffs to swear the affidavit on their behalf contrary to order 1 rule 12 of the [Civil Procedure Rules](#). The applicant contends that the plaintiffs have no locus standi to prosecute the suit as members of Kipsaiya clan and that the suit as framed is scandalous, frivolous and/or vexatious hence it is in the interest of justice that it be struck out.
13. The application is supported by the affidavit of counsel for the 2nd defendant, Kwame Ramo, sworn on 27th February 2025, in which the grounds on the face of the application are reiterated. Annexed to



the affidavit is a copy the notice dated 28th April 2004 marked KR1 and a letter from the Adjudication and Settlement Officer, Marakwet West, East and Kerio valley sub counties, marked KR2. The contents of the letter indicate that the parcel of land in court pitting Mr. Philemon Kimutai Yator and Thomas Rungumo as the plaintiffs v Jacob Biwott and Assistant County Commissioner Kapsowar Sub County as defendants, is undergoing adjudication process.

14. In reply, the plaintiffs/respondents filed the replying affidavit they swore on 19th March 2025 in which they depone/contend that the suit was filed as a consequence of many other suits relating to the suit parcel; that the suit is premised on challenge to the 2nd defendant's powers to adjudicate over land disputes as he lacks jurisdiction to try the dispute between the parties to this suit; that none of the parties were aware of any published notices and/or any ongoing adjudication process; that the 2nd defendant entered the suit land after receiving an award/ruling in his favour by the 2nd defendant thereby entering the plaintiffs' land and causing chaotic situation on the ground necessitating filing of the instant suit; that the document attached by the applicant marked KR1 which is barely legible, was read to court by a third party and does not carry the weight of a gazette notice regarding the adjudication area; that the contents of the document and/or boundaries therein could not be determined with certainty then and even after following up on the same, they have not been able to get a proper document on the same; that the court cannot make an independent finding as to whether or not there was a gazette notice published and/or the contents thereon; that the only document before the court is the letter dated 25th February 2025 which was written after the suit was filed, which letter does not replace a notice.
15. On costs, the respondents contend that it would be unfair and prejudicial to them if the suit were to be dismissed with costs payable by them because the current proceedings arose because the 2nd defendant/applicant arrogated himself jurisdiction to hear the land dispute between the parties to the suit while he had none. The respondents maintain that their possession of the suit property was interfered with despite lengthy proceedings in previous courts and decisions in their favour; that they should not be punished for not having information of a notice that clearly, based on previous proceedings, has not been brought before this court which notice they had no way of knowing existed.
16. Counsel for the 2nd defendant/applicant filed submissions. Counsel for the plaintiffs informed the court that she would be relying on the replying affidavit while Counsel for the 1st defendant informed the court that they were not opposed to the application and would not be filing any submissions.

Submissions

17. In his submissions filed on 25th May 2025, the 2nd defendant/applicant has made reference to the contention by the plaintiffs that there is no clear gazette notice establishing the suit parcel to be part of an adjudication area and to the court proceedings of 29th January 2025 where the issue as to whether the suit land falls in a gazetted land adjudication area was addressed. It is the applicants' case that the court made enquiries from the land surveyor who was present in court and the parties who confirmed that indeed the parcel fell within Kapsowar B Adjudication Section-Kipsaiya Location; that the same was declared an adjudication section on 28th April, 2004 and the register had not been completed.
18. Arising from the pleadings, application and affidavits sworn in support and opposition to the application, the applicant frames the issues for the court's determination as follows;
 - i. Whether the court lacks jurisdiction pursuant to section 30 of LAA?
 - ii. Whether the plaintiffs had exhausted the remedies as set out in the LAA?
 - iii. Whether the court has jurisdiction over an ongoing adjudication process?



19. Concerning the 1st issue, the applicant has made reference to section 30 of the LAA and the pleadings filed in this suit which suggest that ascertainment of rights to the suit properties had not been finalized and the inquiry conducted by the court on 29th January, 2025 which is said to have confirmed that the suit parcel is within an adjudication area where adjudication is ongoing. He submitted that the notice annexed to the application marked KR1 sufficed for purposes of a notice under section 5 of LAA because the plaint filed by the plaintiffs was not accompanied with a consent in writing of the adjudication officer, as required by section 30 of LAA. The applicant further submitted that on account of lack of consent required under section 30 of LAA, this court lacks jurisdiction to hear and determine the suit preferred before it.
20. In that regard, reference is made to the cases of Samuel Kamau & another v Kenya Commercial Bank & 2 others-Supreme Court Civil Application No. 2 of 2011; Reuben Mwangela M'itelekwa [Suing as the Legal Representative of the estate of M'itelekwa M'mucheke Naituri alias M'itelekwa Mucheke] v Paul Kigea Nabea & 2 others [2019]eKLR; and Musana Ole Pere & another v District Land Adjudication Section and Settlement Officer-Narok South & 23 others; Paramalai Pere & another [Interested Party][2019]eKLR.
21. On issue 2, the applicant submits that the LAA has laid down an elaborate procedure for settling disputes between parties and it was upon the petitioners to demonstrate that they had complied with the said procedures for them to have the locus to move this court. In that regard, reference is made to sections 26 and section 29 of LAA and the cases of Reuben Mwangela, supra; the case of Speaker of National Assembly v Karume [1992] KLR 425; Republic v District Land Adjudication and Settlement Officer Kilifi District & 2 others Ex parte Kilifi Munga Alfred & another [2013] eKLR and submitted that courts loath to usurp the jurisdiction and mandate of constitutional or statutory bodies created to solve disputes such as those provided in the LAA. It is submitted that in the circumstances of this case, the only avenue left for this court is to dismiss the suit as it is unmerited and brought with soiled hands and refer the matter to proper agencies for determination.
22. As to whether this court has jurisdiction over ongoing adjudication process, it is submitted that courts have been reluctant to impose their supervisory role over an adjudicated land in which the process is still on going as that process usually entails activities that are outside their area of knowledge and expertise. Based on the provisions of section 30 of LAA and the decisions in the cases of William Mutuura Kairiba v Samuel Nkari & 2 Others [2018] eKLR; Tanley Lezen Mliwa v Leonard Kapala Makangalu & 2 Others cited in the case of William Mutuura supra; Thomas Kinyori Hussein & 3 Others v Mokha Mghanga & 2 Others [2018] eKLR; Benjamin Okwaro Estika v Christopher Anthony Ouko & Another [2013] eKLR; Kilusu Julius Sile & 60 others v Chairperson, Oloirien Adjudication Section "b" Committee & 3 others [2016]eKLR, it is submitted that courts only entertain suits involving land under ongoing adjudication process where consent has been granted.
23. Because in the instant suit the plaintiffs have not demonstrated that they obtained consent from the land adjudication officer to institute the suit, it is submitted that the court is not vested with jurisdiction to entertain the suit.
24. In view of the foregoing, the applicant urges the court to dismiss the suit.

Analysis and determination.

25. This case turns on whether the suit land is situated in an area that has been declared as an adjudication area under section 5 of the LAA and where there is an ongoing land adjudication process. Concerning that issue, the proceedings of 29th January, 2025 allude/suggest that the suit land is situated in an area which has been declared an adjudication area under section 5 of the LAA. Both parties appear to be in



agreement that the land in question is an adjudication area, with the only issue being the authenticity of the notice produced in court concerning the declaration of the area as a land adjudication area. Having looked at the notice attached to the applicant's affidavit sworn in support of the application dated 27th February 2025 seeking dismissal of the suit for want of jurisdiction of this court to hear and determine the suit on account of failure by the plaintiffs/respondents to comply with the mandatory requirements of section 30 of the LAA touching on obtaining consent of the land adjudication officer to sue, I agree with the respondents' contention that the notice is not legible and hence not possible to decipher what its contents are. That notwithstanding, on account of the inquiry made by the court on 29th January 2024 where the plaintiffs/respondents informed the court that they are aware that an adjudication committee has been formed in respect of the area, coupled with the letter annexed to the applicant's supporting affidavit and marked KR2, I have no reasonable grounds for doubting the evidence adduced by the 2nd defendant showing that the suit land is situated in an area that has been declared an adjudication area under section 5 of the LAA and in respect of which adjudication is ongoing. That being the case, in accordance with the provisions of LAA, the plaintiffs/respondents required the consent of the land adjudication officer to institute a suit in respect of the suit land.

26. The contention by the applicant that the plaintiffs /respondents instituted the instant suit without obtaining the consent of the land adjudication officer as required by section 30 of LAA is neither denied nor controverted or displaced by way of evidence showing that the plaintiffs/respondents obtained the consent of the land adjudication officer before filing this suit. The excuse/explanation offered by the plaintiffs/respondents that they were unaware that the area had been declared an adjudication area under LAA cannot confer jurisdiction on this court to hear and determine the suit, when the same is clearly excluded by the applicable law, in particular section 30 of LAA. In that regard, see section 30 of the LAA and the various authorities cited by the applicant regarding failure to comply with the provisions of section 30 of the LAA when instituting a suit concerning land in an area declared as a land adjudication area. For instance, section 30 of the LAA provides as follows:-

“30[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 the adjudication section has become final in all respects under section 29[3] of this Act.

27. It is clear from the above cited provision of the law and the authorities cited herein above, that this court lacks jurisdiction to entertain the suit herein, the same having been filed without seeking and obtaining the consent of the adjudication officer as by law required.
28. Consequently, I dismiss the suit.
29. On costs, I have reviewed the circumstances surrounding filing of the suit and the explanation offered by the plaintiffs/respondents as to why they should not be condemned to pay the costs of the suit and I agree that the defendants contributed to filing of the suit by taking the dispute for arbitration to a forum other than the forum contemplated in the LAA thereby necessitating filing of the instance suit. For that reason, I make no order as to costs. Accordingly, parties shall bear their own cost of the suit and the application.
30. Orders accordingly.

DATED, SIGNED AND DELIVERED AT ITEN THIS 26TH DAY OF JUNE, 2025.

L. N. WAITHAKA
JUDGE



In the presence of;-

Ms. Salim for the Plaintiffs/Respondents

Mr. Kutei holding brief for Mr. Kwame for the 2nd Defendant/ Applicant

Court Assistant Christine

