



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO.38 OF 2019

MOHAMED MKUZI SAHA

MKAUMA KANGO MKUZI

JONATHAN MKUZI SAHA.....PLAINTIFFS

VERSUS

JULIUS MKAUMA TSAMA

NICHOLAS TSAMA MKUZI

JUMA SAHA MKAUMA.....DEFENDANTS

RULING

1. By their Plaint dated 6th June 2019, the three Plaintiffs pray for:-

- a) A declaration that the Plaintiffs are the rightful owners of Parcel Nos. 190,185,453,198,186 and 189 Kaliang'ombe/Jimba.***
- b) A permanent injunction against the Defendants jointly and severally (restraining them) from sub-dividing the plots referred to above.***
- c) Alternatively the Defendants to allow the Plaintiffs quiet enjoyment of all the (mentioned) parcels.***
- d) Costs of this suit.***

2. It is the Plaintiffs' case that at all times material, they were the owners of the said parcels of land and that the Defendants have no rights whatsoever to sub-divide and/or transfer the same.

3. Upon being served with the suit papers, the three Defendants jointly filed a Statement of Defence dated 8th July 2019 wherein they aver that they are the owners of the said parcels of land. The Defendants deny that they have sought for the sub-division of any of the parcels which they state came into their possession pursuant to a decision made by the Land Adjudication Committee for the Kaliang'ombe/Jimba area on 8th September 2017.

4. The Defendants aver that Kaliang'ombe/Jimba is an adjudication section and the process thereof has not been finalized in view of an appeal filed by the Plaintiffs before the Adjudication Arbitration Board. It is accordingly their case that this Court lacks jurisdiction to entertain this suit and urge the Court to strike it out.

5. By their Notice of Motion application dated 8th July 2019 and filed herein contemporaneously with their Statement of Defence aforesaid, the Defendant urge this Court to strike out this suit on the grounds that:-

- i) The suit is frivolous, scandalous and vexatious as the suit lands falls within an adjudication section and adjudication register has not become final;***
- ii) The suit is otherwise an abuse of the Court process;***

iii) The Plaintiffs suit is incompetent and fatally defective as the Court lacks jurisdiction to entertain the same in view of the provisions of the Land Adjudication Act; and

iv) It is in the interest of justice that the suit be struck out.

6. In a Replying Affidavit sworn and filed herein on their behalf by the 1st Plaintiff Mohamed Mkuzi Saha on 17th October 2019, the Plaintiffs concede that there has been litigation at the Adjudication Committee in respect of the said parcels of land.

7. The Plaintiffs accuse the Defendants of going behind the decision of the Adjudication Committee to involve every family in the sub-division of the suit properties and assert that the said situation forced them to file the proceedings before the Arbitration Committee but to-date they are yet to be called for the hearing of their case at the Committee. They urge the Court to safeguard their interest in the land since the adjudication committee is delaying the same.

8. Section 30 of the Land Adjudication Act, Cap 284 provides as follows:-

Staying of Land Suits

“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 that adjudication section has become final in all respects under Section 29 (3) of this Act.

(2) Where any such proceedings were begun before the publication of the notice under Section 5 of this Act, they shall be discontinued, unless the adjudication officer, having regard to the stage which the proceedings have reached, otherwise directs.

(3) Any person who is aggrieved by the refusal of the adjudication officer to give consent or make a direction under Section (1) or (2) of this Section may, within 28 days after the refusal, appeal in writing to the Minister whose decision shall be final.

(4)...

(5) A Certificate signed by an adjudication Officer certifying land to be, or to have become on a particular date, land within an adjudication section shall be conclusive evidence that the land is such land.”

9. As has been said, the reasoning behind Section 30 is that the process of determining rights of people in an adjudication area should be left to the mechanism set out in the Land Adjudication Act and not to the Courts. It is the people on the ground who best know who is entitled to what area of land that is the subject of an adjudication process.

10. The effect of Section 30 is to remove that determination from the jurisdiction of the Court, so that the Court does not determine any conflicts touching on interest over the land without the party aggrieved first seeking the permission of the Adjudication Officer.

11. In the matter before me, the Defendants have in the supporting affidavit of Juma Saha Mkauma annexed a notice dated 15th September 2016 issued by the Land Adjudication Settlement Officer-Kilifi under Section 5 of the Land Adjudication Act declaring the Jimba/Kaliang’ombe area an adjudication Section.

12. The Plaintiffs do not contest the fact that the area is an adjudication area. Nor do they have the authority of the Land Adjudication and Settlement Officer to file this suit.

13. Arising from the circumstances herein it was evident that the suit before me was filed in contravention of Section 30 (1) of the Land Adjudication Act. This Court is expressly prohibited from entertaining the same.

14. Accordingly I have no alternative but to strike out the Plaintiffs’ suit with costs to the Defendants.

Dated, signed and delivered at Malindi this 13th day of March, 2020.

J.O. OLOLA

JUDGE