



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**MISC APP NO. 249 OF 2016**

**WATHOME MALUKI**

**KATIE MALUKI WATHOME.....PLAINTIFFS**

**VERSUS**

**THE ATTORNEY GENERAL** sued for and

on behalf of the **LAND ADJUDICATION**

**OFFICER, KILIFI COUNTY.....RESPONDENT**

**RULING**

1. By an Originating Summons dated 20<sup>th</sup> September 2016, Wathome Maluki (the Applicant) urges this Court to be pleased to extend the time fixed for lodging of objection to the adjudication register for the land parcel known as Plot No. 527 Kamkomani Area, Kilifi County.

2. The application which is supported by an affidavit sworn by the Applicant is premised on the grounds:-

***i) That the Applicant and his family are the beneficial owners and occupiers of the said parcel of land measuring approximately three acres;***

***ii) That the Applicant and his family learnt of the adjudication process of the area through their neighbours in or about (the year) 2008;***

***iii) The family availed themselves for the exercise but were not given the Plot number;***

***iv) Sometimes in the year 2008/2009, the Applicant and his family saw a dispensary being constructed on their land. Despite numerous attempts made, the Applicants only came to learn in the year 2016 that the land had been adjudicated as Plot No. 527 and was registered in the name of the Dispensary;***

***v) That the Applicant and his family were not notified of the inspection register after adjudication as required under Section 25 of the Land Adjudication Act to enable them lodge an objection to the Adjudication Register within the 60 days as required.***

3. The Honourable the Attorney General sued herein for and on behalf of the Land Adjudication Officer, Kilifi is opposed to the application. In a Replying Affidavit sworn and filed herein on 5<sup>th</sup> July 2019 by the Kilifi County Land Adjudication and Settlement Officer James Mwendwa, the Respondent avers that Plot No. 527 Kamkomani Area is situated within Kawala "B" Adjudication Section.

4. The Respondent further avers that according to their records, Kawala 'B' Adjudication Section was declared an adjudication section in 2010 and the process of adjudication was duly carried out and titles were issued. The Respondents further avers that all persons with claims in the said area were duly informed in accordance with the Provisions of the Land Adjudication Act and notices were placed at the Lands Offices and the Assistant Chief's Offices to ensure timely lodging of objections. The Applicant never filed any.

5. I have perused and considered the Originating Summons and the response thereto. I have equally perused and considered the submissions filed herein by Mr. Amadi the Learned Counsel for the Applicant and Mr. Mwarome Munga, Learned Counsel for the Respondent.

6. The Applicant before me urges this Court to extend the time fixed for lodging of an objection to the register in regard to all that parcel of land known as Plot No. 527, Kamkomani Area Kilifi. It is the Applicant's case that his family and himself are the beneficial owners of the said parcels of land measuring approximately three acres as they have occupied the same for a period in excess of 50 years.

7. The Applicant asserts that the adjudication exercise was conducted over the area in the year 2008 while he was serving a prison sentence for a murder conviction imposed upon him in 2006 and that though his family availed themselves for the exercise, they were never notified of the inspection of the register and were thus unable to lodge an objection to the same.

8. As it were, the process of dispute resolution while land adjudication is in progress is provided for under the Land Adjudication Act. Section 26 thereof provides 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 Sub-Section (1) of this Section, and after such further consultation and inquiries as he thinks fit he shall determine the Objection.”***

9. Granted the Applicant was in prison, he avers in his affidavits that his family participated in the adjudication exercise and that they even visited the Chief, the District Officer and the District Commissioner. Contrary to his averments that no notice was given to them of the completion of the register, Section 25(b) of the Land Adjudication Act merely required the adjudication officer to display the original adjudication register for inspection at a convenient place within the Adjudication Section.

10. Indeed Section 31 (1) of the said Act only required the adjudication officer to publish the register at the Provincial Commissioner's Office, or the office of the area District Commissioner or indeed "elsewhere and in such manner as he considers appropriate." As it were, the Applicant does not exhibit any action that was taken by his family to either prove their claim to the land or any efforts they took thereafter to object to the adjudication prior to the completion and finalization of the register.

11. As Mutungi J observed in ***Samuel Nyankanga Aeri –vs- Francis Omundi Gwako & Another (2019) eKLR:-***

***“There is no evidence that anybody raised any objection during the land adjudication process to the Defendants allocation of the suit property. The Land Adjudication Act Cap 284 Laws of Kenya provides an elaborate dispute resolution mechanism. Where the adjudication process under the Act is completed and no objection has been raised the adjudication register becomes final.”***

12. As it were, the Applicant has not even disclosed to whom the dispensary was registered and the registered owner thereof was not enjoined in these proceedings to ventilate the circumstances under which the land was registered as stated to the Dispensary.

13. Arising from the foregoing, it is my considered view that the application for extension of time is misconceived and without merit. Granted the Applicant was in jail, he has not told this Court why his family members did not take any action prior to the finalization and the closure of the register. The application before me is being brought when titles have already been issued and it is my view that it has been brought too late in the day.

14. The upshot is that I find no merit in the Originating Summons dated 20<sup>th</sup> September 2016. The same is dismissed with no order as to costs.

**Dated, signed and delivered at Malindi this 17<sup>th</sup> day of June, 2020.**

**J.O. OLOLA**

**JUDGE**