



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC APPEAL NO. 91 OF 2019

ADIJAH RUBA ALI1ST APPELLANT

ASLI ROBA..... 2ND APPELLANT

VERSUS

HARO QOTI FARMERS SELF HELP GROUP ALIAS HARO FARMERS GROUP

suing through its officials ADAN ABDI SHANAYE..... 1ST RESPONDENT

YAHYA ALI2ND RESPONDENT

ABDI ADAN3RD RESPONDENT

(Being an appeal from the decision and ruling of Hon Sogomo - PM in Tigania Pmc ELC No. 185 Of 2018 dated 27.6.2019)

JUDGMENT

1. The respondents herein sued the appellants in Tigania PMCC ELC No. 185 of 2018 seeking an order of permanent injunction restraining the appellants from dealing with the suit plots A33 and A32 as well as compensation for their demolished houses and fence. The suit was filed contemporaneously with an application dated 27.9.2018 where the respondents sought for injunctive orders against the appellants restraining the latter from dealing with the suit land until the suit is heard and determined. On the same day of 27.9.2018 the injunctive orders were granted pending the hearing of the application inter-partes. The orders were thereafter severally extended.

2. The application was not heard since the appellants brought forth a preliminary objection dated 10.12.2018 where they raised the following grounds;

i. The land subject matter of the suit falls within NGARE MARA GAMBELLA ADJUDICATION SECTION and the plaintiffs did not obtain consent from the DLASO to institute this suit as required by law.

ii. The plaintiffs have stated that the suit herein is brought on behalf of a group referenced as HARO QOTI FARMERS SELF HELP GROUP alias HARO FARMERS GROUP yet they have not obtained any written and signed consent or Authority from the said alleged members to institute this suit as required by the Law.

iii. There is no minute or resolution by the members of the said alleged group authorizing the filing of this suit.

iv. There is no proof of registration or existence of any group by the name HARO QOTI FARMERS SELF HELP GROUP alias HARO FARMERS GROUP.”

3. In a ruling delivered on 27.6.2019, the trial court dismissed the preliminary objection holding that there are no crisp points of law arising from the pleadings.

4. Aggrieved by the said ruling, the appellants filed the memorandum of appeal raising the following grounds;

a. “The learned Principal Magistrate erred in law and fact in casually dismissing the appellants’ preliminary objection dated 10.12.2018.

b. The learned principal magistrate erred in law and fact in failing to find that the appellants' Preliminary objection on the *locus standi* of the respondents to institute the suit was well grounded.

c. The learned principal magistrate misapplied the law and misdirected himself in being so casual with the handling of the appellants' Preliminary objection.

d. The learned principal magistrate misdirected himself into arriving at an erroneous decision to the effect that the Appellants' Preliminary Objection had no crisp point of law.

e. The learned principal magistrate's ruling offends and/or does not comply with the provisions of Order 21 Rules 4 and 6 of the Civil Procedure Rules 2010."

The appellants' therefore pray that;

a. This appeal be allowed and the decision and ruling of the Principal Magistrate's Court in Tigania PM ELC Case No.158 of 2018 be set aside and the same replaced with an order striking out the Respondents' Application dated 27.09.2018 together with the entire suit.

b. The appellants be awarded costs for this Appeal as well as costs for the suit in the Court below.

5. The Appeal was canvassed by way of written submissions. The Appellants have argued that the trial magistrate did not give a summary of the case, and did not singularly address every issue raised in the Preliminary objection, and that the court did not give reasons for its decision. The appellants further stated that the suit is situated in Ngare Mara Gambella Adjudication Section and no consent to file the suit was obtained as required under section 30 of the Land Adjudication Act. It is also averred that there is no evidence to show that the respondents had the mandate from their group to file the suit, and that there is no evidence to show that the group exists. The appellants have therefore urged this court to allow the appeal.

6. For the Respondents, two firms of advocates have filed submissions. Mutembei & Kimathi filed the submissions on 16.06.2020 while Mithiga & Kariuki's submissions are dated 28.5.2020. The firm of Mithiga and Kariuki is however the one which appeared in court on 29.06.2020 to prosecute the appeal, hence the court will consider their submissions.

7. It has been submitted for the respondents that the land falls under a leasehold tenure as per the documents availed. They further state that the suit is filed by officials of the group who are the properly recognized persons in law to sue on behalf of the group. The evidence of authority can be determined during the trial. The respondents also contend that the provisions of order 21 rules 4 and 6 refer to the judgments and not rulings.

8. The respondents cited the following cases in support of their arguments; Jones Mavuti Kisyula & 2 others vs. Harun Gikonge Nyakundi & 11 Others (2018) eKLR and Kenya Agricultural Research Institute (KARI) vs. Farah Ali, Chairman Isahakia Self Help Group & Another (2011) eKLR.

Determination:

9. In the Supreme court of Kenya case of Independent Electoral & Boundaries Commission vs. Jane Cheperenger & 2 Others (2015) eKLR the court stated that;

"A Preliminary Objection should be founded upon a settled and crisp point of law, to the intent that its application to undisputed facts, leads to but one conclusion: that the facts are incompatible with that point of law..."

10. Even if the trial court's ruling is brief, the magistrate clearly set out what a Preliminary Objection case is while citing the case of Mukhisa Biscuit Manufacturing Co. Ltd vs. West England Distributors Ltd(1969) EA696. The trial magistrate had found that no points of law had been raised as non-contentious issues in the pleadings.

11. I have gone through the pleadings and indeed the nature of registration of the land is a contentious issue. The Respondents filed the suit as the officials of the group hence the issue of registration of the group can be canvassed through production of evidence.

12. My conclusion is that the brevity of a ruling does not invalidate the decision unless it fails to capture the gist of the matter. I find no merits in this appeal which is hereby dismissed with costs to the Respondents.

13. A copy of this judgement is to be placed in the lower court file which then is to be severed from the appeal file and to be transmitted back to the trial court for determination of the case.

DATED, SIGNED AND DELIVERED AT MERU THIS 16TH DAY OF SEPTEMBER, 2020

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this Judgment was given to the advocates for the parties through a virtual session via Microsoft teams on 29.6.2020. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this Judgment has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC

JUDGE
