



REPUBLIC OF KENYA

High Court at Kitale

Civil Suit 90 of 2012

NICHOLAS TUKEI PLAINTIFF

VERSUS

CHEPOCHEPKATUG LOYERUK 1ST DEFENDANT

KEDINYANG LOYERUK 2ND DEFENDANT

SIMON LOMERISIA 3RD DEFENDANT

RULING

A Preliminary Objection was taken on behalf of the Defendants on two grounds namely that:-

- 1. The Suit herein is incompetent, bad in law and misconceived for being filed in a manner contrary to the applicable law.*
- 2. The Defendants are not the administrators of the estate of the late Loyeruk Retekol and consequently they have no capacity to be sued.*

The parties agreed to dispose off the Preliminary Objection by way of written submissions. The second ground of the Preliminary Objection was dropped by the Defendants who opted to pursue the first ground only. The Defendants argued that the plot in issue is a group ranch which is governed by the provisions of the Land (Group Representative) Act Cap 287. The Defendants argue that under the said Act, the word “group” has the same meaning as in the Land Adjudication Act. They therefore argue that when dealing with land governed by the Land (Group Representative) Act, the provisions of the Land Adjudication Act do apply and that by virtue of the provisions of the Land Adjudication Act, the Plaintiff was obliged to seek the consent of the Land Adjudication Officer before filing this suit.

Section 30(1) of the Land Adjudication Act provides as follows:-

“Except with the consent in writing of the Adjudication officer, no person shall institute and no court shall entertain any proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respect under section 29(3) of this Act”.

The land in issue falls under West Pokot District Adjudication area. By virtue of Section 30(1) of the Land Adjudication Act, the Plaintiff was under obligation to seek consent of the adjudication officer before bringing this suit. It is conceded by the Plaintiff that he did not seek the consent of the adjudication officer before filing this suit. The Plaintiff urges the court to disregard this citing the provisions of Article 159 2(d) of the constitution which provides that justice shall be administered without undue regard to

procedural technicalities. The object of the Land Adjudication Act states that it is an Act of Parliament to provide for the ascertainment and recording of rights and interests in Trust Land, and for purposes connected therewith and purposes incidental thereto. The marginal notes under Section 30 of the Land Adjudication Act are “Staying of Land Suits”. It is clear from the provisions of Section 30 of the Land Adjudication Act as read with the marginal notes and the objects of the Act that the Legislature wanted ascertainment of interests in land ascertained in an orderly manner without interruptions by suits. This is why it was deemed necessary for consent to be sought from the adjudication officer who will then give consent for the suit to proceed or deny consent depending on the nature of the suit. This was a very important requirement which cannot amount to just procedural technicality which the court can ignore. I therefore find that the Preliminary Objection is well founded. The same is hereby upheld with the result that the suit herein is hereby struck out with costs to the Defendants.

It is so ordered.

Dated, signed and delivered in Open Court on this 7th day of May, 2013.

E. OBAGA

JUDGE

In the presence of Mr. Kiarie for Defendants and Mr. Barongo for Mr. Bororio for Plaintiff.

CC: Joan.

E. OBAGA

JUDGE

07/05/2013