



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC APPEAL NO. 54 OF 2018**

**M'MAILANYI M'ELONGI .....APPELLANT**

**VERSUS**

**FRANCIS LARUI IKIAMBWA.....1<sup>ST</sup> RESPONDENT**

**GRACE LOCHIA LARUI ..... 2<sup>ND</sup> RESPONDENT**

**KEN LARUI .....3<sup>RD</sup> RESPONDENT**

**(Being an appeal of the ruling of Hon. G. Sogomo (P.M.) in Tigania Elc No. 33 of 2012 dated 15/11/2018)**

**JUDGMENT**

1. The appellant was the plaintiff in the subordinate court, while the respondents were the defendants. The appellant filed a plaint dated 1/3/2012 seeking the following orders;

- a. A declaration that the plaintiff is the sole registered owner of land parcel No. 4306 Athinga Athanja Adjudication Section.**
- b. An order of permanent injunction restraining the defendants, either by themselves, agents, workers, servants or anybody howsoever acting on their behalf from entering, occupying, constructing, buildings or dealing in any manner whatsoever with the plaintiffs parcel No. 43 Athinga Athanja Adjudication Section or interfering with the plaintiff's user and enjoyment of the land.**
- c. Costs of the suit and interest**

2. The respondents opposed the suit through a joint statement of defence where they denied the averments set out in the plaint.

3. On 23/8/2018, the trial court on its own motion directed the parties to address the court on **Section 18 (3) of the Land Registration Act** by way of written submissions. In its ruling dated 15/11/2018, the court found that it had no jurisdiction to hear the matter in light of the provisions of **Section 26 (3) of the Land Consolidation Act**. The appellant's suit was consequently struck out with costs to the respondents.

4. Being dissatisfied with the said ruling, the appellant has filed this appeal setting out the following grounds of appeal;

- a. That the learned trial magistrate erred in law and fact by misconstruing and misunderstanding the effect of the consent given by the land adjudication officer for the court to entertain and hear the dispute.**
- b. That the learned trial magistrate erred in law and fact in that he entertained and considered irrelevant matters and came to the wrong conclusion**
- c. That the learned trial magistrate erred in law and fact in that he relied on the wrong provisions of the law and refused the plaintiff/appellant to proof his case therefore shutting him out of the seat of justice.**
- d. That the learned magistrate erred in law and fact in that he did not first of all establish which act of parliament was applicable to the area in dispute and at what stage the dispute was and what his duties were after the consent had been given to the plaintiff by the adjudication officer.**

**e. That the judgement of the learned trial magistrate is bad in law and fact in that it failed to consider or sufficiently consider the material placed before him and went against the provisions of the constitution in that he failed to give the parties a hearing.**

5. This appeal was argued by way of written submissions. The appellant contends that the trial court failed to consider that the trial was on two main issues; trespass and ownership. That the appellant was properly in court having obtained consent from the Land adjudication and settlement officer through a letter dated 14/2/2012, hence the ruling was defective.

6. On the other hand, the respondents argued that the Land Consolidation Act sets out elaborate statutory mechanisms for resolving disputes over land. The adjudication officer confirmed, who the rightful owner of the suit land was. That on examination of prayer (a) of the plaint, the appellant seeks an order to be declared as the owner of the suit land, which prayer amounted to an appeal against the decision by the adjudication officer.

7. The ruling which is the subject matter of this appeal emanates from the proceedings of **23.8.2018** when the court on its own motion stated thus;

**“Parties to address the court on Section 18 (3) of the Land Registration Act by way of written submissions. Mention on 4.10.2018.”**

8. Pursuant to those directions, the appellant filed his submissions on 27.8.2018 averring that the import of the aforementioned proviso was that it relates to boundary disputes of registered parcels.

9. I find that the trial court invoked the provisions of **Section 26 of the Land Consolidation Act** in striking out the appellant’s suit, and there was no reference to the Land Registration Act. The ruling delivered on 15.11.2018 is certainly not in tandem with the directions given by the trial court on 23. 8.2018. In the circumstances, I find that this appeal is merited. The ruling delivered on 15.11. 2018 is hereby set aside and the appellant’s suit is reinstated. For avoidance of doubts, the issue of jurisdiction may still be raised by the parties or the court as long as the relevant applicable law is invoked. Each party to bear their own costs of the suit. The lower court file is to be transmitted back to the trial court for the hearing and determination of the case.

**DATED, SIGNED AND DELIVERED AT MERU THIS 14<sup>TH</sup> DAY OF OCTOBER, 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 7.7.2020. 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 17<sup>th</sup> March, 2020 and published in the Kenya Gazette of 17<sup>th</sup> 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**