



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC APPEAL NO. 140 OF 2019**

**PRISCILLA MURUNGI NJOGU.....APPELLANT**

**VERSUS**

**JOHN PHARES NJERU..... 1<sup>ST</sup> RESPONDENT**

**DUNCUN MWIRIGI NJERU.....2<sup>ND</sup> RESPONDENT**

**FESTUS MURUTANI NJERU .....3<sup>RD</sup> RESPONDENT**

**DLASO TIGANIA WEST/EAST..... 4<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL .....5<sup>TH</sup> RESPONDENT**

**(An appeal against the ruling by Hon. G. Sogomo Principal Magistrate dated 28/11/2019 in Tigania PM ELC No. 6 of 2017)**

**JUDGMENT**

1. On 7/11/2017, the Appellant filed the suit at Tigania court, the same being TIGANIA PM ELC NO 6 OF 2017 seeking the rectification of the land register to have parcel No. 7870 Mbeu 1 revert to the name of Savina Ntue Wamwirichia (deceased) and general damages. It was the Appellants case that she was the only child of Savina Ntue Wamwirichia who died on 23/2/2013. The deceased had remained the registered owner of Land Parcel No. 7870 Mbeu 1 Adjudication Section, where she was buried. The appellant has been and still utilizes the suit land. She has also gone ahead to lease a portion of the land to one Bundi Joseph Ambrose.

2. The appellant contends that the 1<sup>st</sup> Respondent fraudulently colluded with the 4<sup>th</sup> Respondent to have the land transferred to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

3. The suit was opposed by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondent's amended joint statement of defense dated 14/9/2018 where it is pleaded that the suit property was gifted to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents by their now deceased grandmother, Gladys Ntue in or about the year 2012. The 1<sup>st</sup> respondent is a grandfather to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents who are twin brothers. Since their tender age, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents were brought up and educated by the said Gladys Ntue (deceased). On or about 2012 Gladys Ntue called for her brother 1<sup>st</sup> respondent and her daughter the appellant and informed them that she had subdivided her parcel of land into two parcels no. 7870 and 7871 and she had gifted parcel 7870 to her two grandchildren while parcel 7871 was gifted to the appellant. The 1<sup>st</sup> respondent was therefore given a booklet showing the ownership of the then unregistered parcel 7870 to hold in trust for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

4. When the 2<sup>nd</sup> and 3<sup>rd</sup> respondents completed secondary school and obtained their identity cards they officially assumed ownership of parcel no 7870 and when the land in Mbeu 1 was being registered the said parcel was thus registered in their joint names.

5. On 24/10/2019 the Hon. Magistrate gave orders that the parties do address the court on the provisions of Section 26 (3) of Cap 283 and Section 29 (1) of Cap 284 by way of written submissions. The appellant in her submissions argued that the suit land was surveyed and recorded in the adjudication register as that of the deceased but the appellant later discovered that the land is in the name of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. It was her argument that titles have been issued in respect of the suit land, hence the matter is no longer in the purview of the adjudication process. The appellant opined that their rights and interest on the suit land cannot therefore be ascertained through an objection or an appeal to the minister at this stage.

6. The 1<sup>st</sup> -3<sup>rd</sup> respondents also agreed that the trial court had jurisdiction to hear and determine the matter since adjudication was completed

and title deeds were issued to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents way back in year 2017.

7. The trial court however in its ruling dated 28/11/2019 was of a different view and found that the appellant had jumped the gun by rushing to the court and by-passing procedures that were set out in the two adjudication statutes. The court ruled that the appellant had fallen afoul of statutory imperatives by presenting this case to the court instead of ventilating her grievances before the structures set up by statutes and therefore the suit was struck off.

8. Being aggrieved by the said decision, the appellant has appealed to this court on the ground that;

a. The learned Magistrate erred in law and in fact by misinterpreting the provisions of section 26 (3) of the *Land Consolidation Act* and section 29 (1) of the *Land Adjudication Act* and therefore misapplied them.

b. The learned Magistrate erred in law and fact in failing to appreciate that the land is now registered and therefore not within the jurisdiction of the Land Adjudication Officer.

c. The learned Magistrate erred in law and fact in failing to appreciate that the suit land is registered.

d. The learned Magistrate erred in law and fact in failing to appreciate that the claim is based on fraudulent registration of land which can be challenged under the provisions of sections 80 of the *Land Registration Act No. 3 of 2012*

e. The learned Magistrate erred in law and fact in finding that the court had no jurisdiction to hear and determine the dispute.

f. The learned Magistrate erred in law and in fact in striking out the appellant's suit and therefore occasioned the appellant great miscarriage of justice.

g. The decision of the Trial Magistrate went contrary to the rules of natural justice and article 50 (1) of the *Constitution of Kenya*.

9. I have carefully perused through the appeal, affidavits submissions and the record in its entirety and the issue to be determined is **whether the appeal herein is merited?** The respondents herein agreed with the sentiments of the trial court to the effect that the court did not have jurisdiction to hear the matter. The appellant on the other hand submitted that the suit land is registered and therefore the provisions of section 26 (3) of the Land Consolidation Act and Section 29 (1) of the Land Adjudication Act were not applicable.

10. I have not seen any copies of titles appertaining to the suit land. However, both the appellant and the 1<sup>st</sup>-3<sup>rd</sup> respondents contended that the suit parcels are now registered. The 1<sup>st</sup> -3<sup>rd</sup> respondents even have particulars of year of registration (2017). This was sufficient information to find that the matter was no longer in the purview of the adjudication process.

11. In the case of **Fredrick Tureisa Lekesike v Iman Dahir & 3 others [2019] eKLR**( cited by the appellant), this court held that;

**“From the aforementioned provisions of section 30 of the Land Adjudication Act, it is clear that once an adjudication register in an adjudication section has become final, the dispute resolution mechanism under the Act ceases. Rightly so because the next step under taken by the Land adjudication officer is the transmission of the data contained in the register to the Director of Adjudication and settlement for further transmission to the Chief land registrar for the issuance of title deeds. This means that at the district (read county) level, the particulars of the adjudication processes may no longer be available, even the offices may close shop once the processes is finalized. It would therefore be an exercise in futility to send litigants back to a process which no longer exists.”**

12. The adjudication process having ended, then the dispute resolution mechanisms available under the adjudication statutes are no longer applicable. The 4<sup>th</sup> and 5<sup>th</sup> respondents have advanced an argument that the chief land registrar has not been sued and that the actions and omissions of the land adjudication officer have nothing to do with the functions of the Chief Land Registrar. However, those are arguments to be advanced in a live suit and not in a none existent one.

13. A perusal of the pleadings availed before the trial court reveals that none of the parties is challenging the registration of the suit land in the name of one Ntue whom the appellant also identifies as Savina while 1<sup>st</sup> - 3<sup>rd</sup> respondents call her Gladys. Thus the rights and interests in the suit land had been ascertained and recorded accordingly. The plaintiff's claim is that the registration in the name of Savina Ntue was fraudulently interfered with while the 1<sup>st</sup>-3<sup>rd</sup> respondents claim that the transfer was done with the knowledge of the appellant. These are issues well within the ambit of the ordinary courts.

14. In the case of **Stephen Kirimi M'Rinturi v Land Adjudication and Settlements Officer – Igembe District & 3 Others; Peter Kumbu Kimunya & Another (Interested Parties) [2020]eKLR**.

I stated as follows on the issue of jurisdiction of courts in matters adjudication;

**“The courts also ensure that the process of adjudication is undertaken in accordance with the law. The courts can also handle a myriad of disputes arising in adjudication arena as long as such disputes do not fall in the ambit of ascertainment of rights and interests in land as set out in the preamble of Cap 283 and Cap 284.”**

15. In light of the foregoing, I find that it was premature to strike out the suit. **I therefore proceed to set aside the ruling delivered on**

28/11/2019 and instead, I give orders reinstating the suit in Tigania PM ELC No. 6 OF 2017. Each party to bear their own costs of this suit. A copy of this judgment is to be placed in the original file, which file is then to be transmitted back to the trial court for determination.

DATED, SIGNED AND DELIVERED AT MERU THIS 18<sup>TH</sup> DAY OF NOVEMBER, 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 7.10.2020. In light of the declaration of measures restricting court operations due to the *COVID-19pandemic* 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