



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**PETITION NO. 35 OF 2015**

**IN THE MATTER OF ARTICLE 22 AND 23 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF ALLEGED VIOLATION OR INFRINGEMENT OF RIGHTS UNDER ARTICLE 40 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF PARCEL NO. 1390 JIRIME ADJUDICATION SECTION**

**BETWEEN**

**FREDRICK TUREISA LEKESIKE.....PETITIONER**

**AND**

**IMAN DAHIR.....1<sup>ST</sup> RESPONDENT**

**THE DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER,**

**JIRIME ADJUDICATION SECTION (MARSABIT)...2<sup>ND</sup> RESPONDENT**

**THE DISTRICT LAND REGISTRAR, ISIOLO.....3<sup>RD</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**RULING**

1. There are two Petitions for determination. One is Petition no. 35 of 2015 and the other is Petition no. 34 of 2015. Both petitions were filed on 1<sup>st</sup> of December 2015 and they relate to the same subject matter (parcel 1390). In petition 35 of 2015, the petitioner is Fredrick Tureisa Lekesike and he is claiming that land parcel no. 1390 is a consolidation of his two plots, where one of the plots was known as No. 1488 in Marsabit. The petitioner in petition No. 34 of 2015 is Duba Galgalo Duba who claims that he is the owner of land parcel no. 794 which was illegally consolidated into that land parcel known as 1390.

2. The first respondent in both petitions is Iman Dahir. He is the registered proprietor of land parcel no. MARSABIT/JIRIME/1390 whereby the title deed was issued on 30<sup>th</sup> October 2013.

3. On 14.3.2017, the court gave directions for the two matters to run simultaneously.

4. Before the Petitions could be heard on their merits or otherwise, the 2<sup>nd</sup> to 4<sup>th</sup> Respondents (the state) filed a Notice of Preliminary Objection on 3.10.2018 contending that the **Petition was filed in violation of the express provisions of Section 26 of the Adjudication Act CAP 284 of the Laws of Kenya**. On the same day (3.10.2018), the court gave directions for the Preliminary Objection to be canvassed by way of written submissions and the matter was to be mentioned on 22.11.2018. As I embarked on writing a ruling herein, I have come across another Preliminary Objection filed on 8.11.2018 by 1<sup>st</sup> Respondent. It also raises the issue of jurisdiction on account of the provisions of section 26 and 30 of the Land Adjudication Act. Although directions were not taken regarding this latter Preliminary Objection, the court will still proceed to determine whether the petitions herein are incompetent for want of jurisdiction.

5. Briefly it was submitted for the 1<sup>st</sup> Respondent that the Petition herein is in violation of the express provisions of Section 26 and 30 of the Land Adjudication Act CAP 284 of the Laws of Kenya, in that Petitioner failed to follow the laid down procedure and also, he failed to obtain the requisite consent as per Section 30 of the said Act. For this proposition, 1<sup>st</sup> Respondent proffered the following authorities;

1) *Kilusu Julius Sile & 60 Others V Chairperson, Oloirien Adjudication Sectin “B” Committee & 30 others [2016] eKLR.*

2) *Nicholas Mugambi & Another (suing as the legal representatives of the Estate of Peter Etharia M’ Kailibi) & 4 Others Versus Zachary Baariu & 6 Others eKLR.*

6. On the other hand, it was submitted for the 2<sup>nd</sup> to 4<sup>th</sup> Respondents that adjudication is a very important process which ought to be allowed to take place and any person affected by the processes provided for should exhaust the mechanisms laid down in the Act before moving the court and that a person could not file a Constitutional Petition when they have not exhausted the available remedies. These respondents proffered the following cases;

- **Arithi Self Help Grazing Group vs The Land Adjudication Officer Imenti North & Another Meru ELC Petition 28 of 2015**

- **John Masiantet Saeni vs Daniel Aramat Lolungiro & 3 others (2017) eKLR and David Mtawali Kazungu Yaa vs National Lands Commission & 3 others (2017) eKLR.**

7. For the petitioners, submissions were filed in respect of petition 35 of 2015. It was submitted that the provisions of CAP 284 Laws of Kenya which relates to the system of settlement of disputes during adjudication process was not the only way to solve disputes, since even the Act provides for such disputes to similarly be handled by the courts subject to the issuance of a consent for institution of such suit by the District Land Adjudication and Settlement officer. Further, the Petitioner avers that he had requested for consent from the 2<sup>nd</sup> Respondent in order to file a civil suit but the 2<sup>nd</sup> Respondent declined to issue the same stating that the adjudication in the area was complete and titles had been issued.

8. I have carefully considered the Notices of Preliminary Objection and the rival contentions by the parties. The law on Preliminary Objections is now well settled. In the case of *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696* it was inter alia stated as follows;

***“So far as I’m aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit....”***

9. Section 30 of the Land Adjudication Act provides as follows;

***“(1) Except with the consent in writing of the adjudication officer, no person shall institute, and no court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in***

***all respects under [section 29\(3\)](#) of this Act.***

***Subsection 3 further provides;***

***Any person who is aggrieved by the refusal of the adjudication officer to give consent or make a direction under subsection (1) or (2) of this section may, within twenty-eight days after the refusal, appeal in writing to the Minister whose decision shall be final”.***

10. Section 26 of the Land adjudication Act provides that ;

***“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 subsection (1) of this section, and after such further consultation and inquiries as he thinks fit he shall determine the objection”.***

11. In paragraph 6 of the Replying affidavit of the Land Adjudication officer, Mr. John Muchiri, he states as follows;

***“That the final register was forwarded to the director of land adjudication and settlement and after he was satisfied, issued a letter of finality and subsequently forwarded the final register to the chief land registrar for registration of titles. Annexed and marked “JMM4” is the letter of finality from the director of the adjudication”.***

12. The letter “JMM4” referred to by the Land Adjudication officer confirms that the register for the **JIRIME ADJUDICATION SECTION** was forwarded to the Chief land registrar.

13. Further, it is apparent that a title has been issued in respect of parcel no **MARSABIT/JIRME/1390**, see-annexure “DIA2” availed by the 1<sup>st</sup> respondent.

14. 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.

15. Thus the cases cited by the Respondents are distinguishable from the present case. For instance, in the case of **Arithi selfhelp Grazing group vs, DLASO ( supra)**, I was determining a dispute concerning unregistered land, where I stated thus;

***“I find that the petitioners have no titles to the suit land. The land is expansive about 1000 acres. I am of the view that this is unregistered community land whereby the process of changing the tenure system from community land ownership to individual tenure system was under way through the adjudication process but this process has stalled due to unending litigation”.***

16. In the cases of **John Masiantet Lolungiro and 3 Others (supra)**, and the case of **David Mtawali Kazungu Yaa vs. The National Land Commission and 3 Others (supra)**, the courts were dealing with situations where petitioners had participated in the objection proceedings which is a crucial step anchored under section 26 of the Land adjudication Act.

17. In the present dispute, adjudication is over. It cannot therefore be said that there are dispute resolution mechanisms available under the land adjudication Act as at now in so far as the dispute is concerned.

18. I also find that it is not clear under which category of land the claims of the petitioners fall under. As pointed out by 1<sup>st</sup> respondent in his replying affidavit, the documents availed as annexure “FTLb” and “FTLc” indicate that Petitioner in Petition no 35 of 2015 was paying land rent to the county council of Marsabit for his plot no 1488 which he claims was amalgamated with another plot to give rise to parcel 1390. Likewise, the petitioner in petition no. 34 of 2015 has availed annexures “DGD 2d” and “DGD 2d” indicating payment of land rent to the Marsabit County Council for plot no 794. However, the legal land regime governing the land where one pays land rent and rates is quite different from the one where communal land system is changed to individual freehold system through adjudication process. The court would be interested in ascertaining the basis upon which the petitioners were paying land rent to the council in respect of land under adjudication!.

19. It is also not lost to this court that whereas the Land Adjudication Officer avers that the process of adjudication for the disputed parcel no. 1390 was under the Land adjudication Act, a document availed by the petitioner “FTL4”, indicates that the law applied was the land consolidation Act (Cap 283 laws of Kenya).

20. The foregoing analysis clearly shows that the dispute is not in the ambit of the adjudication process and as such, the Preliminary Objections must fail. **The same are hereby dismissed with no orders as to costs.**

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 28<sup>TH</sup> MARCH, 2019 IN THE PRESENCE OF:-**

C/A: Kananu

Ayub holding brief for Kitheka for petitioner

Kiongo for 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents and holding brief for Abubakar for 1<sup>st</sup> respondent

Kitheka for petitioner

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**