



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT EMBU

E.L.C. CASE NO. 34 OF 2016

PETER MBOGO NGATHIKO.....1ST PLAINTIFF

SAMUEL MURIITHI.....2ND PLAINTIFF

MICHAEL KARIUKI MWANIKI.....3RD PLAINTIFF

JACOB NJERU MUGO.....4TH PLAINTIFF

MARINGA NGATHIKO.....5TH PLAINTIFF

NGARI NGUNGURU.....6TH PLAINTIFF

CHRISPINE NDARU KARIUKI.....7TH PLAINTIFF

VERSUS

MBARA MWARIRE.....1ST DEFENDANT

ITA MWARIRE.....2ND DEFENDANT

REGISTRAR OF LANDS MBEERE LAND

ADJUDICATION OFFICER, MBEERE SOUTH.....3RD DEFENDANT

RULING

1. By a plaint dated 24th May 2016 and amended on 5th April 2017 the Plaintiffs sought the following reliefs against the Defendants;

a. Orders of cancellation and removal of Plot No. 2640 Gichiche Adjudication Section from Block No. 22 Gichiche Adjudication Section.

b. An order allowing the occupants of Block No. 22 Gichiche Adjudication Section to cause sub-division and issuance of individual titles to their respective parcels of land.

c. The costs of this suit.

2. The Plaintiffs pleaded that they were the legitimate owners of *Block No 22 Gichiche Adjudication Section* (hereinafter *Block 22*) and that the 3rd Defendant had wrongfully and without the consent of the Plaintiffs excised *Plot No. 2640 Gichiche Adjudication Section* (hereinafter *Plot 2640*) from *Block 22* upon the request of the 1st and 2nd Defendants.

3. The 1st and 2nd Defendants filed a statement of defence dated 1st August 2016 in which the Plaintiffs' claim was denied. It was contended that *Plot 2640* was lawfully carved out of *Block 22*. It was also pleaded that there were previous proceedings before the High Court and the Court of Appeal over the same subject matter which is in dispute herein. The Defendants further contended that the court had no jurisdiction to entertain this suit since the Plaintiffs had not obtained the consent of the Land Adjudication Officer to institute the suit.

4. There is no indication on record of any defence having been filed on behalf of the 3rd Defendant, the Land Registrar Embu.

5. By a notice of motion dated and filed on 4th October 2018 which was brought under the provisions of **Order 51 (1) and Order 1(10) of the Civil Procedure Rules, sections 3 and 3A of the Civil Procedure Act (Cap 21) and all other enabling provisions of the law**, the Plaintiffs sought the following orders;

a. That this application be certified urgent and service of the same be dispensed with in the first instance.

b. That this honourable court be pleased to enjoin the Land Adjudication Officer, Mbeere South, Gichiche Adjudication Section as the 4th Defendant in this matter as a necessary party.

c. That this honourable court be pleased to re-issue the order on record issued on 4th January 2017 by honourable Justice P.M. Njoroge directed at the Land Adjudication Officer, Mbeere South, Gichiche Adjudication Section.

d. That the further amended plaint be deemed as duly filed and served.

e. That the costs of this application be provided for.

6. The said application was based upon the grounds set out on the face of the motion. It was contended that the Land Adjudication Officer, Mbeere South, Gichiche Adjudication Section is a necessary party to the proceedings and as such ought to be joined as a 4th Defendant.

7. The said application was supported by an affidavit sworn by the 1st Plaintiff on 4th October 2018 on his own behalf and on behalf of his co-Plaintiffs. The said affidavit reiterated and expounded upon the grounds set out in the notice of motion. In paragraph 6 of the supporting affidavit, the 1st Plaintiff stated as follows;

“6. THAT I am advised by my advocate on record, which advise (sic) I verily believe that it is prudent that the Land Adjudication Officer, Mbeere South, Gichiche Adjudication Section be joined herein as the questions to be determined herein are those within his duties and mandate as underscored in the Land Adjudication Act as the matter is still at adjudication stage. (Annexed herein and marked Exhibit A” is the draft Further Amended Plaint)”. (Underlining added)

8. The Attorney General filed a statement of grounds of opposition dated 12th November 2018 in opposition to the said application. It was contended, *inter alia*, that the application had no legal basis under **Order 1 Rule 10 of the Rules**; that the application was in contravention of **sections 26, 29 and 30 of the Land Adjudication Act (Cap 284)** (hereinafter *the Act*); and that granting the third prayer would be a violation of the rules of natural justice and of **Order 29 Rule 2 of the Rules**. There is no indication on record of the 1st and 2nd Defendants having filed a response to the said application.

9. When the said application was listed for hearing on 24th October 2018, it was directed that the same be canvassed through written submissions. The record shows that the Attorney General filed submissions on behalf of the 3rd Defendant on 29th November 2018, the Plaintiffs filed theirs on 31st January 2019 whereas the 1st and 2nd Defendants filed theirs on 5th March 2019.

10. The court has considered the Plaintiffs’ said application, the 3rd Defendants grounds of opposition as well as the parties’ submissions on record. Although there are several issues which arise from the Plaintiffs’ application, the court is of the view that the question of jurisdiction is critical and has to be determined in the first instance. The court has noted that the Plaintiffs have not submitted on the jurisdiction of the court even though the issue was raised by the 3rd Defendant in their grounds of opposition dated 12th November 2018.

11. It has been held time and again that jurisdiction of a court or tribunal to entertain a claim is of paramount importance for without it, a court has to down its tools. The court can do no better than quote from the Court of Appeal case of the **Owners of Motor Vessel “Lillian S” Vs Caltex Oil (Kenya) Ltd [1989] KLR 1** where the court observed as follows;

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for continuation of proceedings pending other evidence. A court of law must down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

12. But what is meant by the term jurisdiction? The Court of Appeal in the said case defined it by quoting the following passage from **Words and Phrases Legally Defined** – Vol. 3 at page 113 thus:

“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether

the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.” (Underlining added).

13. Similarly, in the case of **Samuel Kamau Macharia & Another Vs Kenya Commercial Bank & 2 Others [2012] eKLR** the Supreme Court of Kenya held as follows;

“A court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondent in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter before it is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings...where the constitution exhaustively provides for the jurisdiction of a court of law, the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.”

14. It is, therefore, imperative for the court to establish if it has jurisdiction to entertain the suit and application. The provisions of **section 30 (1) of the Land Adjudication Act** stipulate 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.”

15. The court takes it that in order for the court to exercise jurisdiction over a claim over land in an adjudication section there must be either written consent of the *Land Adjudication Officer* (hereinafter *LAO*) or the adjudication register must have become final in all respects. So, have the Plaintiffs satisfied either of those conditions precedent? There is no doubt from the material on record that the consent of the LAO was not availed to the court by the Plaintiffs. The only issue for consideration is whether or not the register has become final in all respects.

16. As pointed out earlier on, the 1st Plaintiff has sworn in paragraph 6 of the supporting affidavit that the matter “is still at adjudication stage.” Hence the reason for seeking to join the LAO in the proceedings. The court is consequently of the opinion that the conditions precedent to the exercise of the court’s jurisdiction have not been satisfied. The Plaintiffs have come to court prematurely.

17. The court has perused the case of **Thomas Kinyori Hussein & 3 Others Vs Mokha Mghanga & 2 Others [2018] eKLR** which was cited by the advocates for the 1st and 2nd Defendants. The court is in full agreement with the court’s holding on the application of **section 30 of the Act**. In the said case, the court cited the following passage from the Court of Appeal decision in **Benjamin Okwaro Estika Vs Christopher Anthony Ouko & Another [2013] eKLR**;

“That being so, the mandatory requirements of section 30 (1) had to be complied with i.e. consent of the Land Adjudication Officer has to be obtained before filing a case in respect of a dispute on land in that adjudication section before the court could be clothed with jurisdiction to hear it. From what we have discussed above, it will be clear that we are in full agreement with the learned judge that the court had no jurisdiction to entertain the matter that was before him as no consent had been obtained.”

18. The upshot of the foregoing is that the court finds and holds that the conditions precedent to the exercise of its jurisdiction have not been satisfied. The court finds and holds that it has no jurisdiction to entertain the Plaintiffs’ suit and notice of motion dated 4th October 2018. Accordingly, the court makes the following orders;

- a. The Plaintiffs’ suit is hereby struck out with costs to the Defendants.
- b. The Plaintiffs’ notice of motion dated 4th October 2018 is hereby struck out with costs to the Defendants.
- c. Any subsisting interim orders herein are hereby vacated.

19. It is so ordered.

RULING DATED, SIGNED and DELIVERED in open court at EMBU this 28th day of MARCH, 2019.

In the presence of Ms Nzekele holding brief for Mr Kamunda for the Plaintiff and Ms Kiai holding brief for Mr Kathungu for the 1st and 2nd Defendant and in the absence of the Attorney General for the 3rd Defendant.

Court clerk Muinde.

Y.M. ANGIMA

JUDGE

28.03.19