



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 235 OF 2016

FRANCIS MWITI WANDERI.....PLAINTIFF

-V-

JOSEPH MBIJIWE.....1ST DEFENDANT

DAVID MUTUMA MUGAMBI.....2ND DEFENDANT

RULING

1. The plaintiff instituted this suit by an Amended Plaint filed in court on 5th June 2017, contending that he was the recorded owner and proprietor of land parcel number 4886 at Ruiru/Rwarera Adjudication Section, within Buuri District. Consequently, he prayed for an order inter alia to evict the defendants, their servants, employees, agents or anybody else acting under their names to stop them from trespassing on the suit property.

2. Before the matter could be heard on its merits or otherwise, the defendants filled a Notice of Preliminary Objection contending inter alia that the honourable court had no jurisdiction to entertain this suit since the issues raised herein were in the purview of the Land Adjudication Officer.

3. When the matter came up for hearing on 16th July 2018, the court directed that the Preliminary Objection be heard by way of written submissions. I have only seen the submissions of the defendants.

4. Briefly it was submitted for the defendant that the subject matter of the suit land was under adjudication and therefore the applicable law was the Land Adjudication Act CAP 284 Laws of Kenya which statute provided mechanisms for dealing with disputes of this nature, particularly under section 26 and 29 thereof. It was further submitted that plaintiff had not exhausted all the procedures laid down in the Act before coming to court for redress and the court could not take over the role of the Land Adjudication Officer, since it did not even have the necessary machinery to enable it effectively resolve such disputes and the plaintiffs claim was therefore premature hence the court lacked jurisdiction to entertain the suit.

5. I have carefully considered the Notice of Preliminary Objection. The law on preliminary objections is now well settled. In the case of **Mukisa Biscuit Manufacturing Company Limited v 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 off the suit...."

6. In the instant case the defendant contended that the subject matter of this suit is land which was under adjudication and therefore the applicable law was the Land Adjudication Act CAP 284 of the Laws of Kenya and that the mechanisms of dealing with disputes of this nature was found in Section 26 of CAP 284. The said section provides as follows:

"any person named in or affected by the adjudicating 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".

7. A careful perusal of the pleadings herein shows that the plaintiff is not disputing the adjudication register as envisaged by Section 26 supra. The plaintiff is essentially seeking an eviction order against the defendants from land parcel number 4886 Ruiru/Rwarera Adjudication Section within Buuri district. Vide a letter dated 6th October 2016, the District Land Adjudication & Settlement Officer Imenti North/Imenti South/Meru Central & Buuri confirms that parcel numbers 3162,4634 and 4886 Ruiru/Rwarera Adjudication Section are in the name of among others the plaintiff herein. The letter further confirms that the section is at the objection stage of the Land Adjudication Act CAP 284

of the Laws of Kenya. Similarly, vide a consent given by the District Land Adjudication and Settlement Officer dated 10th November 2016, he inter alia avers;

“in order to complete the Adjudication Register for Ruiru/Rwarera Adjudication Section, I shall in due course, require a copy of the final orders made in the case listed in the schedule.”

8. From the foregoing it is evident that the register has not been completed as envisaged under Section 26 (supra).

9. Taking into totality all the circumstances in this case, I find the Notice of Preliminary Objection dated 16th July 2018 to be unmerited and the same is accordingly dismissed in its entirety with no orders as to costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 15TH MAY, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Muthomi for plaintiff/respondent

Plaintiff

HON. LUCY. N. MBUGUA

ELC JUDGE