



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 55 OF 2010

PAUL KIANJI THITWA.....PLAINTIFF

VERSUS

JAMES M'IGWETA.....1ST DEFENDANT

MONICA MARINDI.....2ND DEFENDANT

JAMES MUTHIORA.....3RD DEFENDANT

JUDGMENT

INTRODUCTION

In his plaint dated 22nd April 2010, the plaintiff sought judgment against the defendant for the following orders:

- (a) A declaration that the plaintiff is owner of 17.55 acres as per attached sketch plan under Meru Customary Tenure or marked in nullified Adjudication register as No. 689 – Ruiru/Rwarera.***
- (b) A permanent order of injunction restraining the defendant, whether by himself, his agents, servants, employees or otherwise from interfering, entering, trespassing, damaging or in any manner whatsoever interfering with the plaintiff's possession of 17.55 acres shown on the attached sketch plan or marked in the nullified Adjudication Register as No. 689 Ruiru/Rwerera.***
- (c) Damages for the damages caused to plaintiff's property.***
- (d) Costs and interest.***
- (e) Any further or better relief this Honourable Court may deem fit to grant.***

The suit was filed simultaneously with a Chamber Summons under certificate of urgency dated the same day. When the said application was placed before the duty Judge, the same was certified urgent and temporary injunction orders were issued pending interpartes hearing on 6th May 2010. On 1st August 2010, the defendant filed his statement of defence denying the plaintiff's claim.

PLAINTIFF'S CASE

It is the plaintiff's case that he is the owner of land measuring 17.55 acres along Meru Isiolo Road which land he has held since the year 1970 under Meru Customary Tenure. He stated that he had built on the land and had been cultivating the same. He has been in peaceful possession of the suit land until the year 2000 when the District Land Adjudication officer declared the area an adjudication section without considering the boundaries between Meru Central District and Meru North District. He stated that the Adjudication officer then placed all the land in Meru Central District although his land is in Meru North District. He stated that his land was measured and recorded as if it was in Meru Central District. The plaintiff further stated that some people forged the Adjudication Register with the help of Adjudication officers and the whole process was nullified. The plaintiff testified that in March 2010, the defendant dubiously acquired a neighbouring land and forcibly, violently evicted the occupant. He further stated that despite the fact that his land is separated by a road from the one acquired by the defendant as per sketch map produced by him in evidence, the defendant crossed to his land and started removing his fence and burnt down his houses and has been bringing people to evict him. The defendant was reported and a criminal case instituted against him and was found guilty and fined Ksh. 10,000/= for malicious damage.

DEFENDANTS CASE

The defendants' case is that land parcel No. 689 RUIRI/RWARERA was registered in the joint names of the 1st and 2nd defendants in the year 1969 whereupon they transferred to the 3rd defendant currently the registered owner. The defendants further argued that the plaintiff has no right to the land at all and that he is a trespasser.

SUBMISSIONS BY PLAINTIFF

The plaintiff through the firm of Maitai Rimita & Co. Advocates submitted that from the Exhibits produced by plaintiff, it is crystal clear that the area under which the suit land is situated was under 'NGWATO' which was Meru Customary Land Tenure before it went under the Land Adjudication Act Cap 284 Laws of Kenya. The counsel submitted that the people who had land in that area under 'NGWATO' had their land parcels measured where each person was occupying on the ground. It is further submitted that Beacons were placed on the land in the year 1984 and that they were long before settled in the area by the year 1970. It is submitted that a problem occurred when it came to giving land parcel numbers in the register when in the year 2010 they came to realize that they had been duped as what used to be their land parcel number was registered under the names of James M'Igweta and Monicah Marindi. The plaintiff submitted that when Intex Construction Company Ltd went to his land and started excavations, he wrote a demand letter dated 4th March 2010. Again in 2003, the plaintiff made a complaint to the Lands office regarding the land parcel numbers. Again on 1st April 2010, the plaintiff wrote a letter of complaint to the District Land Adjudication officer who ordered that status quo be maintained by both the plaintiff and the defendant on the ground. In conclusion, the plaintiff submitted that as it is now, the defendant is sitting on 36 acres of land which he submitted, is a clear indication that this is a case where land parcel numbers have been interchanged and given illegally and unlawfully thereby leaving out the plaintiff who is and has been in possession and occupation of his land on the ground since 1970s'. The plaintiff further submitted that the defendant wants to take over the whole land which is over 35 acres yet he has testified that his land is only 17.55 acres. He also submitted that the plaintiff and the defendant's land is separate and distinct.

DEFENDANTS SUBMISSIONS

The defendant submitted that the plaintiff has not produced any single document in support of his claim. They submitted that the plaintiff only obtained the consent of the Land Adjudication officer to institute a suit in relation to parcel No. 689 within Ruirirwarera Adjudication Section. They submitted that they have produced a confirmation letter dated 18/3/2010 indicating that as at the date of that letter, parcel No. 689 within Ruirirwarera Adjudication Section was registered in the names of James M'Igweta and Monica Marindi who are the 1st and 2nd defendants herein. They also produced a letter dated 8/7/2014 which showed that at the time, parcel No. 689 within Ruirirwarera Adjudication Section was registered in the name of James Muthiora the 3rd defendant herein. The defendants further submitted on the testimony of the 3rd defendant as DW1 and confirmed that he was the current registered owner of parcel No. RUIRI/RWARERA/689 within Ruirirwarera Adjudication Section and that he acquired the same as a gift from his mother, the 2nd defendant.

It is also submitted that from the testimony of 3rd defendant, Intex Construction Company even compensated him for the gravel that was excavated in the suit land. In conclusion, the defendants submitted that they have tendered sufficient evidence to show that they have proprietary interests over land parcel No. RUIRI/RWARERA/689 within Ruirirwarera Adjudication Section and that the land is currently owned by the 3rd defendant as the sole registered proprietor who also has exclusive use and possession. It is further submitted that it was only in 2010 when the plaintiff attempted to enter the suit land.

ISSUES FOR DETERMINATION

- (1) Whether the plaintiff is entitled to the reliefs sought in the plaint.*
- (2) Whether the suit property is under Adjudication Section and which is the applicable law.*
- (3) Who is liable to pay costs?*

DISPOSITION

The plaintiff on 23/4/2010 filed the instant suit and attached verifying affidavit and a consent of the Land Adjudication officer pursuant to **Section 30 and 8 (1) of the Land Adjudication and the Land Consolidation Act Cap 284 and 283** respectively. By implication, the suit land is a land situated within an adjudication section. The same letter was also produced by the defence as Defence Exhibit No. 1. The defendants produced Defence Exhibit 2 which is a confirmation letter issued by the District Land Adjudication and Settlement officer, Imenti North District which indicates that the suit land parcel No. RUIRU/RWARERA/689 is registered under the names of JAMES I'GWETA and MONICA MARINDI. The officer further confirmed that the suit land is situated in Ruirirwarera Adjudication Section measuring approximately 17.55 acres. Defence Exhibit No. 3 are copies of cheques from Intex Construction Limited being compensation for extraction of gravel and store material for purposes of construction of roads in Meru Central/Isiolo District for a period of two (2) years. Defence Exhibit No. 4 is an agreement between the 3rd defendant and Intex Construction Ltd for the said extraction of gravel and store materials. Defence Exhibit No. 5 is a demand letter by the firm of Maanzo & Co. Advocates addressed to Intex Construction Limited dated 4th March 2010. These are uncontroverted evidence that the suit property which is situated in an adjudication section is registered in the name of the defendants who have exclusive right of utilization and occupation over the same.

Under **Section 26 of the Land Adjudication Act Cap 284 Laws of Kenya**, the law states:

- (1) Any person named in as 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 sub-section (1) of this section, and after such further consultation and inquiries as he thinks fit he shall determine the objection”.

The statutory provisions guiding all claims and interest in land situated within adjudication section provides remedies where an aggrieved person considers a register incomplete or incorrect in any respect. In this case, the plaintiff had a remedy under statute to write to the Adjudication officer stating in what respect he considers the adjudication register to be incorrect or incomplete within sixty days. Instead of availing himself within the remedy provided under statute, the plaintiff wishes the Court to substitute the same functions the adjudication officer was created by Parliament to perform. The plaintiff has not stated why he wants to hear his case afresh. Faced with a similar issue **Mumbi Ngugi Judge** in the case of ***Moses Nandalwa Wanjala Vs Kenyatta University (2015) e K.L.R*** observed as follows:

“Secondly, the petitioner seems to be asking to substitute the decision of the respondent in its disciplinary process with that reached by the Parliamentary Committee when it enquired into the strikes that took place at the respondent university. He asks that the Court adopts the decision of the Parliamentary Committee on Education which was more comprehensive and accurate and exonerated him from wrong doing. However, neither in his pleadings nor in the submissions made on his behalf did the petitioner show a legal basis for this argument. The Court cannot substitute its own view of a matter on the merits for that of the body mandated by statute to make a determination on the matter. It is difficult to see the basis on which the finding or decision of a Parliamentary Committee can be substituted for that of the body mandated by law to make a determination on a matter”.

The Adjudication officer had just published the completion of the adjudication register when the plaintiff opted to come to this Court for a parallel adjudication instead of exhausting his remedies available under the law. In the case of ***Daniel Nyongesa and others Vs Egerton University College C.A No. 90 of 1989, Nyarangi J.A*** (as he then was) stated as follows:

“Courts are very loath to interfere with decisions of domestic bodies and tribunals including college bodies. Courts in Kenya have no desire to run universities or indeed any other bodies. However, Courts will interfere to quash decisions of any bodies when the Courts are moved to do so where it is manifest that decision has been made without fairly and justly hearing the person concerned or the other side It is the duty of the Courts to curb excesses of officials and bodies who exercise administrative or disciplinary measures. Courts are the ultimate custodian of the rights and liberties of people”.

The ***Land Consolidation and Adjudication Act Cap 283 and 284 Laws of Kenya*** are the two statutes generating the ascertainment and recording of rights and interests in land; consolidation and demarcation; and creation of adjudication register in Kenya. That function cannot be substituted by the Courts. The mandate of the ***Environment and Land Courts*** is to interfere where it is manifest that a decision has been made without fairly and justly hearing the person concerned or the other side. It is the duty of the Courts to curb excess of officials and bodies who exercise administrative functions. That is not the position obtained in this case. The plaintiff has moved this Court seeking to substitute the decision of the Land Adjudication officer who is mandated by law. That cannot happen.

In the upshot, this suit is incompetent and bad in law. The same is hereby dismissed with costs to the defendants.

READ and SIGNED in open Court at Meru this 3rd June, 2019.

E.C. CHERONO

ELC JUDGE

3RD JUNE, 2019

In the presence of:

- 1. M/S Rimita for Plaintiff*
- 2. M/S Nyaga for Defendants*