



Mzame v Cabinet Secretary of Lands & Settlement & 3 others; Mwambusi & another (Interested Parties) (Petition E014 of 2024) [2025] KEELC 5557 (KLR) (28 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5557 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
PETITION E014 OF 2024**

EK WABWOTO, J

JULY 28, 2025

IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL UNDER ARTICLES 10, 40, 43, 47, 48 & 50 OF THE CONSTITUTION OF KENYA.

IN THE MATTER OF: ADJUDICATION COMMITTEE AND ARBITRATION BOARD AND OBJECTION IN LAND COMMITTEE CASE NO. 438 AND 439 RONGE JUU ADJUDICATION SECTION.

IN THE MATTER OF: THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION & PROTECTION OF FUNDAMENTAL RIGHTS & FREEDOMS OF THE INDIVIDUAL) HIGH COURT PRACTICE RULES, 2013.

IN THE MATTER OF: PLOT NOS: 858 AND 859 RONGE JUU ADJUDICATION SECTION.

IN THE MATTER OF: ARTICLES 20, 21, 22 & 23 OF THE KENYA CONSTITUTION OF KENYA, THE ENVIRONMENT & LAND COURT ACT NO. 19 OF 2011, SECTIONS 13, 19, 20, 21, 22, 26, 27, 28 AND 29 OF THE LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA, THE LAND ACT NO. 6 OF 2012 AND THE LAND REGISTRATION ACT.

IN THE MATTER OF: LAND ADJUDICATION ACT CHAPTER 284 LAWS OF KENYA AND ARTICLE 159 OF THE CONSTITUTION OF KENYA 2010.

BETWEEN

KHAMISI MWANGEMI MZAME PETITIONER

AND

CABINET SECRETARY OF LANDS & SETTLEMENT 1ST RESPONDENT

LAND ADJUDICATION OFFICE, KILIFI COUNTY 2ND RESPONDENT

REGISTRAR OF LANDS, KILIFI 3RD RESPONDENT



ATTORNEY GENERAL 4TH RESPONDENT

AND

RICHARD LAMBOLA MWAMBUSI INTERESTED PARTY

VICTOR MWANDALI INTERESTED PARTY

RULING

1. The salient issue for determination in this ruling is whether this court lacks jurisdiction to hear and determine the petition on the grounds that the petition offends the doctrine of exhaustion, the Petitioner has not obtained consent of the Land Adjudication Officer, the petition offends the provisions of the [Land Adjudication Act](#) and the petition offends the doctrine of constitutional avoidance.
2. The Respondents filed a Preliminary Objection which raised the aforementioned grounds.
3. During the plenary hearing of the Preliminary Objection, Learned Counsel Mr. Penda appeared and made oral submissions for the Respondents, Learned Counsel Mr. Mkan made oral submissions for the Petitioner while Learned Counsel Mr. Mwanyumba submitted on behalf of the Interested Parties.
4. The Respondents argued that the provisions of the [Land Adjudication Act](#) provides for mechanism for addressing objections and the Petitioner had not complied with the same. Reliance was placed on Sections 29 and 30 of the said Act.
5. It was further submitted that the Petitioner had conceded that there is need to amend the Petition when the Respondents' Preliminary Objection was raised seeking to challenge the court's jurisdiction.
6. The Interested Parties also made oral submissions in support of the Preliminary Objection. Citing the case of Twala =Versus= Attorney General (2022) KEHC 17104 (KLR), it was argued that the Petitioner never took any action to comply with the provisions of the [Land Adjudication Act](#) prior to filing of the instant petition and as such the Preliminary Objection by the Respondents ought to be upheld.
7. In opposing the objection, the Petitioner argued that the Petition raises serious issues. Consent from the Land Adjudication Officer is not required for the purposes of filing a Petition and the doctrine of Constitutional avoidance does not apply therein. It was further submitted that the Petitioner objected to the decision that was made by the Land Adjudication Officer and that this petition ought to have been brought under the [Land Consolidation Act](#) where no consent was required. It was further submitted by the Learned Counsel that the committee had made a final decision and hence the Petition was properly before this court.
8. Having considered the Preliminary Objection and the oral submissions made by the Learned Counsel for the parties on record, the court has to consider whether it has jurisdiction to hear and determine the Petition in light of the objections made.
9. From the perusal of the Petition before court, it is evident that this Petition is in respect of objections Numbers 438 and 439 Ronge Juu Adjudication Section which cases concerned a parcel of land known as Plot No. 858 and 859 Ronge Juu/Voi/Taita (hereafter called the suit property).



10. Section 30 of the [Land Adjudication Act](#), Chapter 284, Laws of Kenya is couched in peremptory terms states thus;

“ 30. Staying of land suits

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.

Where any such proceedings were begun before the publication of the notice under section 5 of this Act, they shall be discontinued, unless the adjudication officer, having regard to the stage which the proceedings have reached, otherwise directs.

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.

The foregoing provisions of this section do not prevent a final order or decision of a court made or given in proceedings concerning land in an adjudication section being enforced or executed, if at the time this Act is applied to the land the order or decision is not the subject of an appeal and the time for appeal has expired.

A certificate signed by an adjudication officer certifying land to be, or to have become on a particular date, land within an adjudication section shall be conclusive evidence that the land is such land.

Every certificate purporting to be signed by an adjudication officer shall be presumed to be so signed unless the contrary is shown.”

11. My understanding of provisions of Section 30(1) of the [Land Adjudication Act](#) drives me to the conclusion that where the disputed land falls within an adjudication section, no court is seized of jurisdiction to entertain and or adjudicate upon a suit touching on such land. However, the provisions of the said section create two exceptions, namely, where the adjudication process has been completed and a certificate of finality in terms of Section 29(3) of the act has been issued; or where the land adjudication and settlement officer has issued a consent.
12. Other than the two exceptions which have been adverted to in the preceding paragraph, it is common ground that a court of law is divested of jurisdiction by dint of Section 30(1) of the [Land Adjudication Act](#).
13. In the case of Benjamin Okwaro Estika v Christopher Antony Ouko & another [2013] eKLR, the Court of Appeal stated thus;

“ That being so, the mandatory requirements of Section 30 (1) had to be complied with i.e. consent of the Land Adjudication Officer had to be obtained before filing a case in respect of a dispute on land in that adjudication section or before the court could be clothed with jurisdiction to hear it.”



14. Most recently, the Court of Appeal re-visited the import and tenor of Section 30(1) in the case of *Bhajjee & another v Nondi & another* (Civil Appeal 139 of 2019) [2022] KECA 119 (KLR) (18 February 2022) (Judgment), where the court stated thus;

“ 13. The section therefore requires consent to be given before institution of civil proceedings concerning an interest in land in an adjudication section. The said consent is a condition precedent to a valid suit concerning disputes of land in an adjudication section and specifically requires the suits to be discontinued if started without consent. The section therefore clearly affects the power and jurisdiction of courts to hear and determine such disputes. The rationale for the said provisions is that there is an elaborate process that is laid down by the *Land Adjudication Act*, on how to determine which persons are, and the extent to which, they are entitled to interests in the land under adjudication, and it is therefore necessary that it is first employed before resort is made to the Courts, and also shielded from unnecessary and unjustified abuses. Indeed, it has been severally held by this Court that where a dispute resolution mechanism exists outside courts, the same has to be exhausted before the jurisdiction of the courts is invoked.”

15. In the absence of the consent from the land adjudication and settlement officer, in accordance with the prescription of section 30 of the *Land Adjudication Act* it then means that the suit that was filed was premature.

16. In the instant case, it is indeed evident that the said process under the Act has not been concluded. Needless to mention that the doctrine of constitutional avoidance does not divest this Court of the jurisdiction to hear and determine Constitutional Petitions. The doctrine only restrains the court from hearing and determining a matter where there exists another appropriate forum that can hear and determine the matter effectively.

17. From the perusal of the entire petition, it is clear that the Petition ought to have obtained consent from the adjudication officer before filing the instant matter. There was no evidence to confirm the same.

18. In the foregoing analysis and finding, the following orders are hereby issued:-

- a. The Petition dated 23rd December 2024 is hereby struck out.
- b. Each party to bear own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 28TH DAY OF JULY 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Mkan for the Petitioner.

Mr. Koech h/b for Mr. Penda for the Respondents.

Mr. Mwanyumba for the Interested Parties.

Court Assistant: Mary Ngoira.

