



**REPUBLIC OF KENYA**

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

**ELC NO.50 OF 2015**

**SAMUEL BUSIEGA.....PLAINTIFF**

**VERSUS**

**JANE JEMAIYO NG'ARNG'AR (Sued as the Legal Administrator of the Estate of**

**WILLIAM ELIUD NGA'RNGA'R (Deceased).....DEFENDANT**

**RULING**

This ruling is in respect of a notice of a preliminary objection dated 11<sup>th</sup> April 2019 by the defendant on the grounds:

1. That by dint of Section 30 of the Land Adjudication Act Cap 284 the court has no jurisdiction to hear the suit because the dispute herein over **LR. NO. NANDI/KOIBARAK/781 and NANDI/KOIBARAK/815** was heard and deferred by the Land Adjudication officer and the dispute resolved.
2. That the appeal is pending before the Minister and there is no evidence of withdrawal.

Counsel agreed to canvass the preliminary objection vide written submissions which were duly filed.

**Defendants' Counsel's Submission**

Counsel gave a brief background to the case and submitted that this matter had been adjudicated upon by the District Lands Adjudication and Settlement Officer Nandi District on 10<sup>th</sup> May 1996 vide an Objection No. 121 of 1983. That the parties to the case were OBJECTOR – EDWIN NG'ARNG'AR (deceased) (Now JANE NG'ARNG'AR) as the legal administrator Vs. RESPONDENT SAMUEL BUSIEGA and that the subject matter of the ownership of **LR. NO. NANDI/KOIBARAK/781 and NANDI/KOIBARAK/815**.

Counsel submitted that the objection was allowed and the objector was awarded plot Nos 781 and 815 and a title deed was issued subsequently on 20<sup>th</sup> July 2004. It was Counsel's further submission that the plaintiff herein being dissatisfied by the decision filed an appeal to the Minister in accordance with Section 29 (3) of the Land Adjudication Act which is still pending. He stated that this was confirmed vide a letter dated 11<sup>th</sup> December 2013 from the District Land and Adjudication officer Nandi County and the green card issued on 13<sup>th</sup> June 2019 by the Nandi County Land Registrar that the Appeal was still pending before the Minister.

It was Counsel's submission that the ruling of the Adjudication officer has not been challenged in court and the Appeal to the Minister is still pending and the Minister is not a party to this suit. Mr. Kitur therefore submitted that there is no evidence that the Land Adjudication officer has issued a consent to the plaintiff as stipulated under Section 30 of the Land Adjudication Act. Counsel urged the court to allow the preliminary objection and strike out the suit.

**Plaintiff's Counsel's Submission**

Counsel for the plaintiff submitted on the ingredients of preliminary objections as per the Mukisa Biscuits Case which requires that they deal purely on points of law. Counsel submitted that the defendant did not plead want of jurisdiction in his defence and hence this is an afterthought.

Counsel further submitted that the green card does not indicate that the adjudication process is still pending as a title deed was issued. That the appeals were withdrawn and opted to file this current case. Counsel urged the court to dismiss the preliminary objection.

**Analysis and Determination**

Section 30 of the Land Adjudication Act is very clear that a consent of the land Adjudication Officer must be sought and obtained before filing a suit in court. Where a party is dissatisfied with the decision of the Land Adjudication Officer and have preferred an Appeal to the Minister, the same must be heard or withdrawn before a party can file suit in court.

Counsel submitted that the said appeal before the Minister was withdrawn but there is no evidence of such withdrawal. The letter dated 11<sup>th</sup> December 2013 and the green card dated 13<sup>th</sup> June 2019 speak the opposite of what Counsel submitted on. It is clear from the letter which is addressed to the plaintiff's Counsel and the green card that the matter is still pending before the Minister which in effect robs the court of requisite jurisdiction to hear and determine this matter. Parties cannot be allowed to use parallel processes to try their luck. This would create confusion in case the parallel forums arrive at different decisions. This is purely forum shopping and an abuse of the court process.

**Section 29** of the **Land Adjudication Act** provides that;

***“(1) Any person who is aggrieved by the determination of an objection under section 26 (1) & (2) of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by—***

***(a) delivering to the Minister an appeal in writing specifying the grounds of appeal; and***

***(b) sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.***

***(2) The Minister shall cause copies of the order to be sent to the Director of Land Adjudication and to the Chief Land Registrar”.***

The record from the green card shows that the appeal is still pending and restriction has been lodged pending the finalization by the Minister. There is no proof that a consent was sought and obtained in writing from the Land Adjudication Officer before this matter was filed before the court. As I have mentioned before that jurisdiction is everything and the moment it is questioned and it is established that the court does not have jurisdiction to handle a certain matter then the court must down its tools.

Having said that I find that this suit was filed prematurely as the court does not have jurisdiction to hear and determine this matter and is therefore struck out with costs to the defendant.

**Dated and delivered at Eldoret on this 17<sup>th</sup> day of July, 2019.**

**M.A. ODENY**

**JUDGE**

RULING read in open court in the presence of Mr.Kiplagat holding brief for Mr.Amasakha for Plaintiff/Respondent and in the absence of Mr.S.K. Kitur for Defendant/Applicant.

Mr.Mwelem – Court Assistant