



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC APPEAL NO 305 OF 2013

STEPHEN KUBAI LYRIA.....APPELLANT

VS

FRANCIS NKUBITU THIAURU.....1ST RESPONDENT

LAND ADJUDICATION OFFICER TIGANIA WEST.....2ND RESPONDENT

HON. ATTORNEY GENERAL.....3RD RESPONDENT

JUDGMENT

1. This appeal arises out of the judgment delivered on 30/4/15 by the Senior Resident Magistrates Court @ Tigania in Civil Case No 120 No. 120/2010.
2. This is a 1st appeal before this Court and the Court is entitled to evaluate the evidence pleadings and proceedings of the lower Court in matters of law and evidence. Upon such evaluation the Court is entitled to make its own conclusions and a decision thereon.
3. The proceedings leading to this appeal and commenced by way of objection proceedings No. 1418 before the Land Adjudication Officer of Tigania West District in respect of Land Parcel No. 2122 – Uringu II Adjudication section (suit land) upon which a decision was made on 17/9/10.
4. It appears that the Plaintiff then respondent was dissatisfied with the decision of the District Land Adjudication Officer and commenced the proceedings relating to the Judgement appealed against finally by an amended plaint dated 15/11/12. In the Plaint, the Plaintiff seeks the following orders;
 - a) Declaration that the objection proceedings Nos.323, 1417 and 1418 before Land Adjudication Officer Tigania West District and the decision of Land Adjudication Officer Tigania West District dated 17th September, 2010 are a nullity and void.
 - b) Declaration that the Plaintiff is the lawful owner of land parcel No. 2122-URINGU II ADJUDICATION SECTION.
 - c) An injunction restraining the 1st Defendant from trespassing, occupying, cultivating or in any other way interfering with Plaintiff's peaceful/quiet enjoyment, use and/or possession of the land parcel No. 2122-URINGU 11 ADJUDICATION SECTION.
 - d) Costs of the suit.
5. In the said case the 1st Defendant filed a defence on 25/1/13 and denied the Plaintiff's claim and asserted the validity of the objections complained of by the District Land Adjudication Settlement Officer.
6. After hearing the case the Learned Acting Principal Magistrate on 30/7/13 delivered his judgement in which he entered Judgement against the Plaintiff and awarded costs of the suit to the 1st Defendant.
7. Aggrieved by the decision of the PMCC the Appellant filed a memo of appeal dated 13.10.13 and sets forth the grounds of appeal that the Learned trial magistrate erred in law and facts;
 - a) In failing to find and hold that the 2nd Respondent illegally entertained objection Nos. 323, 1417 and 1418, having been filed and prosecuted by the 1st respondent, pretending to be the late FRANCIS NKUBITU, without any form of letters of administration over his estate.

b) In holding that he has no jurisdiction to issue an order of declaration, yet he has such jurisdiction by dint of Sections 1A, 1b and 3A of the Civil Procedure Act, Cap 21, Laws of Kenya, Article 159 of the Constitution of Kenya and judicial authorities (decisions).

c) In failing to find and hold that the Appellant's claim in the primary suit was not opposed by the 2nd and 3rd respondents, though satisfactory served in that primary case.

d) In failing to analyze, evaluate and appreciate the weighty and corroborated evidence of the Appellant, *vis-à-vis* the scanty and contradictory evidence of the 1st respondent.

e) In finding that the 2nd respondent was entitled to hear and determine the afore-said objections under Section 26 of the Land Adjudication Act, Cap 284, which concerns objections to correct errors in an adjudication register, yet the said objections concerned a claim of ownership over the Appellant's land parcel No. 2122 under the Land Consolidation Act, Cap 283, Laws of Kenya.

f) In holding that the Appellant ought to have appealed against the decision of the 2nd Respondent in the aforesaid objections under section 29(1) of the Land Adjudication Act, Cap 284, yet those objections were filed, heard and determined under The Land Consolidation Act, Cap 283, which deals with claims over an interest in land, and not errors in an adjudication register.

8. On 12.3.18 the parties appeared before the Court by counsel and agreed to prosecute the case by written submissions. The Appellant filed submissions on 13/4/18 and the respondent filed on 17/4/18. As in the lower Court the 2nd and 3rd respondents did not file any pleadings in the appeal.

9. The Court has considered the memo of appeal, the proceedings and the judgement of the lower Court and the written submissions of the parties. The major issues for determination is;

A. Whether the Appellant is entitled to the prayers stated in the memo of appeal.

B. Costs

10. As stated earlier the proceedings commenced with the objection filed under the Land Consolidation Act Cap 283. The effect of the orders sought by the Appellant if granted both in the lower Court and this Court would be to invalidate and or set aside the objection proceedings No. 1418 and determined by the 2nd respondent aforesaid. In such a scenario, it would be like the Lower Court and or this Court would be hearing and making a decision on the matters decided by District Land Adjudication and Settlement Officer aforesaid.

11. Section 26(1) – (2) – (3) of the Land Consolidation Act states as follows;

“(1) Any person named in or affected by the Adjudication Register who considers such Register to be inaccurate or incomplete in any respect, or who is aggrieved by the allocation of land as entered in the Adjudication Register, may, within sixty days of the date upon which the notice mentioned in section 25 of this Act is published at the office of the Regional Government Agent within whose district the adjudication area to which such Register relates is situated (and such date shall be endorsed upon the said notice), inform the Adjudication Officer, stating the grounds of his objection, and the Adjudication Officer shall consider the matter with the Committee and may dismiss the objection, or, if he thinks the objection to be valid, order the Committee to take such action as may be necessary to rectify the matter and for this purpose the Committee may exercise all or any of the powers conferred by section 21 of this Act. (2) If the Adjudication Officer considers that such rectification would incur unreasonable expense, delay or inconvenience, he may award such compensation in lieu of rectification as he may deem appropriate. (3) No appeal shall lie against any decision by the Adjudication Officer to dismiss an objection or order rectification or to award compensation in lieu of rectification, as the case may be, but the Minister or any person to whom compensation has been awarded and who is dissatisfied with the amount awarded by the Adjudication Officer may apply to a Subordinate Court held by a Resident Magistrate for its revision in such manner as may be prescribed.

From the above, it follows that the decision of the District Land and Settlement Officer is final.

12. In view Para 10, it is clear that any person dissatisfied with the decision of District Land and Settlement Officer can only challenge it by way of administration proceedings under Judicial Review. The only time that a matter from District Land and Settlement Officer Proceedings would be referred to the Subordinate Court held by Resident Magistrate would be if the minister is dissatisfied by an award of compensation given by the District Land and Settlement Officer; such proceedings in the lower Court are not the proceedings out of which the judgement therefrom is being appealed against.

13. Upon the evaluation above it is clear that the lower Court did not possess jurisdiction to entertain, hear or determine the Plaintiff's claim in the suit relating to the award appealed. Section 1A and 1B and 3A and Article 159 (2) (d) cannot be applicable in the face of express and statutory provisions of an Act as stated above. This case is not one of those that the Court should exercise its inherent powers.

14. The lower Court fell in error when it relied on section 26 of the Land Adjudication Act Cap 284 instead of section 26 of Land Consolidation Act Cap 283 in arriving at its decision. This is more so because of the proceedings by the District Land and Settlement Officer were undertaken in accordance with Land Consolidation Act Cap 283.

15. This Court has reached the same decision as the lower Court but for different reasons stated above.

16. In view of the findings in Para 12, it is not necessary to consider further the appeal before this Court because the finding disposes of the

Appellants case both at the lower Court and in this appeal.

17. In the end the Court makes the following orders:-

- a) The appeal be and is hereby dismissed.
- b) Costs of the appeal are payable by the Appellant.

DELIVERED, DATED AND SIGNED AT MERU THIS 28TH DAY OF JUNE, 2018.

J G KEMEI

JUDGE

In the presence of:

C/A Mutua

Gikonyo holding brief for Calpeters Mbaabu for Appellant

Mwiti holding brief for Kimathi Kihara for 1st Respondent

Kiongo for 2nd and 3rd Respondents