



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ELDORET

ELC NO. 54 OF 2017

KIPTALA ROTICH SILA.....1ST PLAINTIFF

DAUDI KENDAGOR CHEBOI.....2ND PLAINTIFF

MOSES W. KIPLAGAT.....3RD PLAINTIFF

VERSUS

BORESHA SACCO SOCIETY LTD.....1ST DEFENDANT

BARWESA TRACK USERS ASSOCIATION.....2ND DEFENDANT

CATHOLIC DIOCESES OF NAKURU.....3RD DEFENDANT

JAMES KIPLAGAT.....4TH DEFENDANT

RULING

This ruling is in respect of a notice of a preliminary objection dated 18th October 2017 by the 1st defendant herein on the grounds that:

1. That this suit is incompetent, misconceived, vexatious bad in law and an abuse of the due process of the court.
2. That the suit has been filed in court without the jurisdiction to hear and determine as the plaintiff did not seek for the consent in writing of the land Adjudication Officer Baringo as per section 30 of the Land Adjudication Act.
3. That the Plaintiffs do not have locus standi to institute this matter and therefore the suit should be struck out or dismissed with costs.

The plaintiffs filed this suit on 13th February 2017 and later filed an application for injunction dated 1st August 2017. The matter was listed for hearing of the said application but the 1st defendant filed a preliminary objection dated 18th October 2017.

Counsel for the parties agreed by consent to argue the preliminary objection on 27th June 2018. On the said date the matter was called out and placed aside for hearing at 11 am. Mr. Kipkulei who was holding brief for Mr. Mwaita for the 1st defendant was present together with Mr. Tarus for the 4th Defendant who was not opposed to the preliminary objection. Dr. Chebii for the plaintiffs was however not present.

It should be noted that Counsel for the 1st and 4th defendants proceeded to argue the preliminary objection and a ruling date was reserved for 19th September 2018. Before the ruling could be delivered Counsel for the plaintiff filed an application under certificate of urgency seeking to set aside the ex parte proceedings on the ground that the matter was not listed. The date was taken by consent and Counsel for the plaintiff had been given 7 days to supply the defendants with further documents. Mr. Mitei held brief for Dr. Chebii for the plaintiffs.

I therefore looked at the application as filed for setting aside the ex parte proceedings and found that it did not have merit and dismissed it. Even if the application was heard inter partes the court would still have dismissed it as it would not have changed the position that the suit was filed without the consent of the Adjudication Officer as provided for under section 30 of the Land Adjudication Act Cap 284. This would delay the matter further.

Mr. Kipkulei argued the preliminary objection and stated that the suit parcels fall under Konoo adjudication section within Baringo County. That being an adjudication section it is governed by the Land Adjudication Act Cap 284 revised edition of 2016.

Counsel submitted that the said adjudication section is incomplete and that the plaintiff ought to have exhausted all the procedures under the Land Adjudication Act before proceeding to court. He stated that the plaintiff did not comply with section 30 of the Act which requires the consent of the Land Adjudication officer in writing before proceeding to court.

Section 30 of the Land Adjudication Act is very clear on the requirement of consent of the Land Adjudication officer before institution of a suit in court. In this case, there is no evidence that the plaintiff sought and obtained such consent as per section 30. The suit land falls under Konoo Land adjudication section which is incomplete.

The plaintiff did not exhaust all the procedures under the Land Adjudication Act before proceeding to court. The proceedings of the committee of the land adjudication do not amount to a consent as it is only the Land Adjudication Officer who is authorized to grant such consent. Further there is a letter dated 28th March 2017 on record from the land Adjudication officer indicating that there was no consent to allow the plaintiffs to file this suit. This brings clarity to this case.

I therefore find that this court does not have jurisdiction to hear and determine this suit for failure to comply with section 30 of the Land Adjudication Act. Jurisdiction is everything and once it is challenged and you find that you do not have it then you must down your tools. I have looked at the authorities cited and I agree that the preliminary objection has merit and the entire suit is hereby struck out with costs to the defendants.

Dated and delivered at Eldoret this 19th day of September, 2018

M.A ODENY

JUDGE

Ruling read in open court in the presence of Mr. Tororei holding brief for Mr. Chebii for Plaintiff and in the absence of Mr. Mwaita for defendants.