



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT KERICHO

ELC SUIT NO. 99 OF 2017

JOSHUA NGENO.....PLAINTIFF

VERSUS

KENYA POWER & LIGHTING CO. LTD.....1ST DEFENDANT

COUNTY GOVERNMENT OF KERICHO.....2ND DEFENDANT

RULING

Introduction

1. This ruling is in respect of the 1st defendant's Preliminary Objection dated 30th April, 2018 which is based on the following points of law:
 1. That this honourable court is devoid of jurisdiction to adjudicate and determine that Plaintiff's suit as instituted.
 2. That the complaint and/or allegations by the Plaintiff ought to be determined by the liaison committee as provided for under section 10 (2) of the Physical Planning Act Cap 286 of the laws of Kenya.
2. A brief background of the case is necessary in order to put the Preliminary Objection into perspective.
3. The Plaintiff who is the registered owner of land parcel no. KERICHO/LONDIANI/JOUBERT/KEDOWA BLOCK 6/(BARATION)/165 filed suit against the defendants for trespass to land. The plaintiff's claim is that the 1st Defendant unlawfully entered the his land and installed electricity poles and under-ground water pipes without his knowledge or consent. The said water pumps are for the purpose of pumping water for the 2nd defendant.
4. The defendants filed defences denying the plaintiff's claim and the 2nd defendant alleged that the said water was for the benefit of the community and that the plaintiff is also a beneficiary thereof. In their defences, both defendants admitted the jurisdiction of this court.
5. Before the case could be set down for hearing, the 2nd defendant filed the Preliminary Objection that is the subject of this ruling.
6. In his submissions, counsel for the 2nd defendant has submitted that section 10 (2) of the Physical Planning Act provides for dispute resolution of complaints against the Director of Physical Planning through the liaison committee established under the said Act. He argues that it was premature for the plaintiff to institute this suit before pursuing the said mode of dispute resolution and that the court ought to order the parties to explore a settlement of the matter in accordance with the Physical Planning Act.
7. In his response counsel for the plaintiff has submitted that the suit herein does not touch on the preparation and implementation of the physical development plan as the suit property is private land under the absolute proprietorship of the plaintiff.
8. The only issue for determination is whether this court is divested of jurisdiction to adjudicate and determine this suit as alleged by the plaintiff.
9. I have considered the Preliminary Objection, replying affidavit, rival submissions as well as the authorities and provisions of the law cited to me.
10. It is common ground that the plaintiff is the absolute proprietor of the suit land. The 1st defendant has not placed before this court any material to show that the acts complained of by the plaintiff were carried out in furtherance of the 2nd defendant's Physical Development Plan as anticipated by the Physical Planning Act. In any event, if that was the case, the 2nd defendant would have had to compulsorily to

acquire the plaintiff's land in accordance with Article 40 of the Constitution. No basis has been laid for the manner in which the 1st defendant proceeded to deal with the plaintiff's land. The fact that the plaintiff is a beneficiary of the water that is being pumped by the 2nd defendant is neither here nor there. Section 10(2) of the Physical Planning Act is of no relevance as the plaintiff has not sued the Director of Physical Planning.

11. It is interesting that when they filed their defences, both defendants admitted the jurisdiction of this court and they are therefore bound by their pleadings.

12. The upshot is that I find no merit in the Preliminary Objection and I dismiss it with costs to the plaintiff.

Dated, signed and delivered at Kericho this 10th day of September 2018.

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J.M ONYANGO

JUDGE

In the presence of:

1. Mr. Chelule Adams for the Plaintiff
2. Mr. Akinyi for Mr. Muyuri for the 1st Defendant
3. Court assistant - Rotich