



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ENVIRONMENT & LAND CASE NO. 80 OF 2013

(FORMERLY CIVIL SUIT NO. 85 OF 2006)

WILLIA KIMAIYO KOILEGE1ST PLAINTIFF

SAMWEL KOILEGE.....2ND PLAINTIFF

- V E R S U S -

CHEROP CHESORWA1ST DEFENDANT

CHEBOI CHESORWA.....2ND DEFENDANT

JUDGMENT

This suit was commenced through a plaint which was filed on 24 July 2006. The plaintiffs have sought orders for a declaration that they are the rightful owners of the Plot No. 56 in Sanguru Land Adjudication section and have further sought to set aside the objection proceedings and Appeal which held that they are only entitled to half of the land and the defendants are entitled to the other half.

In his evidence, the plaintiff testified that the suit land belonged to his late grandfather, one Marigat Kipyebo, who was father to his mother, Talaa Marigat. Talaa, was an only child. He stated that the defendants are sons of the brother to his grandfather, one Chesorwo Marigat. He testified that the defendants thus do not deserve any share of the suit land but the same should go to the plaintiffs. He testified that he was not present when the land was demarcated during adjudication and a ruling was made against them. He appealed to the Minister and it was decided that they should get half of the land. He is aggrieved by this decision and he asserted the position that the defendants do not deserve any share of the land.

In his submissions, Mr. Cheptarus, learned counsel for the plaintiffs submitted inter alia that the decision of the Minister is not final. He also faulted that decision for having been made by the Marakwet District Commissioner and not the Minister. He also pointed out that the decision was made with the assistance of assessors the majority of who decided that the plaintiffs should acquire the land of their late grandfather. He submitted that this is a succession matter and relied on Sections 2 and 47 of the Law of Succession Act, Cap 160, Laws of Kenya. He submitted that a Minister's decision cannot be said to be final on a matter falling under the Law of Succession Act. He further relied on the Constitution, Articles 45(1), 28, 40(3)(b), 10 (1) and (2) and 159(2)(d).

I have considered the matter and I have gone through all the exhibits on record.

The suit property was subject of adjudication and the two parties had a dispute before the Land Adjudication Officer who made a decision on 10 August 1990. In his decision, the Land Adjudication Officer held that the plaintiffs were only entitled to the right of possession and cultivation, but not ownership of the land, which he held ought to be with the defendants. The plaintiffs were aggrieved and filed an appeal to the Minister. The appeal was heard by the District Commissioner of Marakwet District. The holding was that the land be subdivided into two equal portions, one to the plaintiffs and the other to the defendants. It is apparent that the plaintiffs are not happy with this decision hence this suit. In brief, they want the whole of the land.

This being land that was subject to adjudication, the provisions of the Land Adjudication Act, Cap 284, do apply. Section 29 is particularly operative, and it provides as follows :-

29. Appeal

(1) Any person who is aggrieved by the determination of an objection under [section 26](#) 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.

(3) When the appeals have been determined, the Director of Land Adjudication shall—

(a) alter the duplicate adjudication register to conform with the determinations; and

(b) certify on the duplicate adjudication register that it has become final in all respects, and send details of the alterations and a copy of the certificate to the Chief Land Registrar, who shall alter the adjudication register accordingly.

(4) Notwithstanding the provisions of [section 38\(2\)](#) of the Interpretation and General Provisions Act ([Cap. 2](#)) or any other written law, the Minister may delegate, by notice in the Gazette, his powers to hear appeals and his duties and functions under this section to any public office by name, or to the person for the time being holding any public office specified in such notice, and the determination, order and acts of any such public officer shall be deemed for all purposes to be that of the Minister.

[[Act No. 16 of 1977](#), [Act No. 7 of 2007](#), Sch.]

It will be seen from the provisions of Section 29(1) that the decision of the Minister shall be final. There is no provision for a further appeal to the courts. The courts cannot therefore entertain questions about the merits of the decision, though of course, one may seek to quash the said decision, for reasons of want of proper procedure being followed, say through Judicial Review. It is not therefore for this court to question whether the decision of the Minister was correct or not. In matters of land adjudication, the law provides that the decision on who to award land and how much land is to be awarded is left to the bodies laid down in the Land Adjudication Act. It is not for the court to say that so and so ought to have been awarded so much land, for those decisions are left for the institutions in the Land Adjudication Act.

Mr. Cheptarus, in his submissions argued that this was a succession issue for which the Minister had no jurisdiction. My short answer is that this was not a succession dispute. This was a matter that fell under land adjudication and that is why the process in the Land Adjudication Act was followed. In any event, if at all the plaintiffs thought that the matter was one of succession, nothing stopped them from filing a succession cause in the year 1990 when the matter was presented before the Land Adjudication Officer. There was also an issue raised that the appeal was heard by the District Officer. There is nothing wrong in this since under Section 129 (4) the Minister has power to delegate and the practice has been that the delegation is to the District Commissioner or District Officer. Nothing turns on this point. I really have no idea why Mr. Cheptarus pointed me to the various Articles of the Constitution, which to me are all irrelevant. The land adjudication process is a process that is very well elaborately laid down in the Land Adjudication Act. I have not been told that there was anything wrong in the process that was followed. It is only that the plaintiffs wished to have the Minister decide their way and not in the way which he decided, which as I have said, is a complaint against the merits of the decision, which the law does not permit a further appeal to this court.

I really do not see the point of saying more. I see no merit in this suit and the same is hereby dismissed.

I make no orders as to costs as the defendants did not file any defence in this matter.

Judgment accordingly.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 30TH NOVEMBER, 2018

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT