



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO 63 OF 2017

FORMERLY MERU ELC CASE NO. 182 OF 2016

KAUME CHABARI MWENDA.....PLAINTIFF

VERSUS

MWATHI MUTHEO.....DEFENDANT

RULING

1. In his plaint dated 4th October, 2016, the plaintiff prays for Judgment against the defendant for orders:
 - a) An order directing the defendant to give vacant possession of the plaintiff's un-adjudicated land parcel situated at Twathanju Sub-location Kathangacini location.
 - b) An order of permanent injunction restraining the defendant either by themselves, their family members, his agents, assigns or any other person acting on their behest from entering, being and or in any other manner interfering with the plaintiff's un-adjudicated land parcel situated at Twathanju sub-location Kathangacini location.
 - c) Costs of the suit.
 - d) Any other or further orders the honourable court may deem fit to grant.
2. On 13.3.2017 when the matter came up for directions, the plaintiff told the court that his claim concerned unadjudicated land. He averred that the adjudication officer incharge of his area TWATHANJA ADJUDICATION SECTION, had refused to hear him.
3. For indigenous tenure to become justiciable there are processes prescribed by the Land Adjudication Act, the Land Consolidation Act and the Community Land Act. The plaintiff does not indicate that the land he is claiming has been subjected to the processes required by any of the 3 Acts.
4. Article 61(2) of the Constitution of Kenya classifies land as public, community or private.
5. Article 64 of the Constitution of Kenya decrees that private land consists of:
 - a) Registered land held by any person under a freehold tenure;
 - b) Land held by any person under leasehold tenure;

c) Any other land declared private land under an Act of Parliament.

6. I opine that the land claimed by the plaintiff does not fall under the ambit of the 3 categories pellucidly delineated by the Constitution. In a more direct statement, unadjudicated land, unless it is subjected to a process leading to a known tenure is not recognized under the 3 categories of private land recognized by the Supreme law of the land.

7. The Land Adjudication Act provides a procedure for ascertainment and recording of rights and interests in Trust Land.

8. The Land Consolidation Act provides for the ascertainment of rights and interests in, and for Consolidation of Land in the special areas. It also provides for registration of title and of transactions and devolution affecting such land and other land in special areas.

9. The Community Land Act contains provisions apposite to community land.

10. It is veritably pellucid that the plaintiff does not claim that his land has been subjected to the processes contemplated by either the Land Adjudication Act, the Land Consolidation Act, or the Community Land Act.

11. As determined in *Meru ELC No. 198 of 2016, eKLR, M'ITHANA M'THIRINGA VERSUS MURITHI M'AMBURUBUA*, this court has no jurisdiction to usurp the powers of institutions created by the Land Adjudication Act and the Land Consolidation Act, which are creatures of the legislature. As this court opined in the above cited case;

“If the court attempts to do so, this would render the concerned institutions superfluous and as dead as dodos. This can never be the intention of the law.”

12. The Supreme Court of Kenya in *Civil Application No. 2 of 2012 (SK Macharia & Another Versus KCB & 2 Others* gave guidance on the area of Jurisdiction. It stated as follows:

“A Court’s Jurisdiction flows from either the Constitution or legislation or both. Thus a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the 1st and 2nd respondents in his submissions that the issues as to whether a court of law had jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings.....”

13. In the Classic Case of “The MV Lilian “S”, [1989] KLR I, Court of Appeal, Justice Nyarangi, JA, opined as follows:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

14. I find that this court has no jurisdiction to handle matters concerning unadjudicated land unless when dealing with questions concerning the integrity of the adjudication process.

15. In the circumstances, I issue the following orders:

1. This application is dismissed.

2. This suit is dismissed in its entirety.

3. No costs are awarded.

16. It is so ordered.

Delivered in open court at Chuka this 13th day of **March, 2017** in the presence of:

CA: Ndegwa

Kaume Chabari Mwenda - Plaintiff

P.M. NJOROGE

JUDGE