



REPUBLIC OF KENYA



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Tanin & another v Land Registrar, Narok County & 4 others (Environment and Land Case 5 of 2020) [2024] KEELC 910 (KLR) (26 February 2024) (Ruling)

Neutral citation: [2024] KEELC 910 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND CASE 5 OF 2020
CG MBOGO, J
FEBRUARY 26, 2024

BETWEEN

KIROKET OLE TANIN 1ST PLAINTIFF

BENARD SALAU TANIN 2ND PLAINTIFF

AND

THE LAND REGISTRAR, NAROK COUNTY 1ST DEFENDANT

THE COUNTY SURVEYOR, NAROK COUNTY 2ND DEFENDANT

MUSANKA OLE RUNKES TARAKWAI 3RD DEFENDANT

NOOLTUBULA NAIDUTA ENE TARAKWAI 4TH DEFENDANT

SELELNA ENOLE TARAKWAI 5TH DEFENDANT

RULING

1. Before this court for determination is the Notice of Preliminary Objection dated 7th July, 2023 filed by the 3rd, 4th and 5th defendants challenging the amended plaint dated 31st January, 2023 on the following grounds: -
 1. That the plaintiffs claim offends Section 26 (1) of the [Land Adjudication Act](#) Cap 284 Laws of Kenya since the plaintiffs did not object to the adjudication register within 60 days when the notice of completion of adjudication register was published on 21st day of July, 2014 as provided in the Act.
 2. That the plaintiffs claim offends Section 29 (1) of the [Land Adjudication Act](#) Cap 284 Laws of Kenya since the plaintiffs did not appeal the determination of the adjudication register within 60 days when the finalization of adjudication register was completed as by Section 27 of the [Land Adjudication Act](#) Cap 284 above.



3. That the applicant herein must come before court with clean hands and in proper observation of the law for the law to be applied judiciously.
2. The 3rd, 4th and 5th defendants pray that the amended plaint dated 31st January, 2023 ought to be dismissed with costs to the 3rd, 4th and 5th defendants.
3. The Notice of Preliminary Objection was canvassed by way of written submissions.
4. On the 26th January, 2024 the plaintiffs filed their written submissions dated 22nd January, 2024 where they identified two issues for determination as follows: -
 - a. Whether the suit should be struck off.
 - b. Whether the notice of preliminary objection is merited.
5. On the 28th December, 2023 the 3rd, 4th and 5th defendants filed their written submissions dated 21st December, 2023 where they raised the following issues for determination: -
 - A. Whether the plaintiffs claim offends Section 26(1) of the Land Adjudication Act Cap 284 Laws of Kenya since the plaintiffs did not object to the adjudication register within 60 days when the Notice of completion of adjudication register was published on 21st day of July, 2014 as provided in the Act.
 - B. Whether the plaintiffs claim offends Section 29 (1) of the Land Adjudication Act Cap 284 Laws of Kenya since the plaintiffs did not appeal the determination of the adjudication register within 60 days when the finalization of adjudication register was completed as by Section 27 of the Land Adjudication Act, Cap 284
 - C. Whether the applicant herein must come before court with clean hands and in proper observation of the law for the law to be applied judiciously.
 - D. Where there should be costs.
6. I have considered the Preliminary Objection and the written submissions filed by the plaintiffs and the 3rd to 5th defendants and, in my view, the issue for determination is whether the notice of preliminary objection has merit.
7. A Preliminary Objection was described in the *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696 to mean: -

Per Law, JA

“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration”.

Further Sir Charles Nebbold, P stated that: -

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise



of judicial discretion. The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”

8. This court having made a finding on the description of a preliminary objection, it is not in doubt that a Preliminary Objection raises pure point of law, which is argued on the assumption that all facts pleaded by the other side are correct. However, it cannot be raised if any facts have to be ascertained from elsewhere or the court is called upon to exercise judicial discretion. In the case of *Quick Enterprises Ltd v Kenya Railways Corporation*, Kisumu HCCC No.22 of 1999, the court held that: -

“When preliminary points are raised, they should be capable of disposing the matter preliminarily without the Court having to result to ascertaining the facts from elsewhere apart from looking at the pleadings.”

9. It is also this court’s opinion that in determining a Preliminary Objection, the court will also consider that the Preliminary Objection must stem from the pleadings and raise pure point of law. See the case of *Avtar Singh Bhamra & Another v Oriental Commercial Bank*, Kisumu HCCC No.53 of 2004, where the court held that: -

“A Preliminary Objection must stem or germinate from the pleadings filed by the parties and must be based on pure points of law with no facts to be ascertained.”

10. Before I embark on determining the merits of the Preliminary Objection, this court has to first determine whether what has been raised herein satisfy the ingredients of a Preliminary Objection. As the court determines whether what the plaintiffs have filed amounts to a Preliminary Objection or not, the court will also be persuaded by the findings in the case of *Oraro v Mbaja* (2005) 1KLR 141, where the court held that: -

“Anything that purports to be a Preliminary Objection must not deal with disputed facts and it must not derive its foundation from factual information which stands to be tested by rules of evidence”.

11. The 3rd, 4th and 5th defendants have challenged the amended plaint dated 31st January, 2023 on the grounds that it offends the provisions of Section 26 (1) and 29 (1) of the *Land Adjudication Act*. According to them, the plaintiffs did not object to the adjudication register within the 60 days provided for in the Act and they did not appeal to the Minister as is required under Section 29 of the *Act*.

12. In determining the objection, this court will be strictly confined to the pleadings and anything that would require this court to draw reference outside the pleadings, particularly the amended plaint would defeat the purpose of what a Preliminary Objection constitutes.

13. The plaintiffs’ filed an amended plaint dated 31st January, 2023 seeking the following orders: -

- i. A permanent injunction do issue restraining the defendants either by themselves, their agents and/or persons under their express authority or any other persons from evicting, harassing, threatening to evict, and in any way interfering with the plaintiffs’ quiet possession and/or continued residency in the property known as parcel nos. 33,506 and 507 in the Enoombarbali Adjudication Section, Narok pending the determination of the 1st plaintiff’s complaint dated 1st October 2019 and filed on 4th October 2019 by the Interested party.
- ii. Costs of the suit and interest.



14. For ease of record, I will reproduce the relevant paragraphs necessary for determination of the Preliminary Objection. Paragraph 11 of the amended plaint reads as follows: -
- “When the adjudication process began, the community residing in the disputed property chose the members of the adjudication committee which committee members included the 1st plaintiff's two (2) elder brothers namely Turanta Ole Tanin and Maison Ole Tanin and further the 1st Plaintiff's nephew and Turanta Ole Tanin's son was elected as vice-chair of the adjudication committee.”
15. Paragraph 14 reads: -
- “The adjudication began when the adjudication committee appointed Kosiom Ole Lemurt, a private surveyor who subcontracted a Mr. Abraham Kinuet, also a private surveyor to undertake the survey process and demarcation contrary to Land Adjudication Act and public policy.”
16. Paragraph 15 reads: -
- “Upon the completion of the adjudication process, and subdivision, balloting was carried out and it emerged that the Chairman of the Land Adjudication Committee allocated himself parcel no. 33 the land upon which the 1st plaintiff's homestead currently stands.”
17. Paragraph 16 reads: -
- “That further the said private surveyor Abraham Kinuet was also awarded land in the adjudication section after the process was completed which is contrary to the balloting process and policies.”
18. Paragraph 17 reads: -
- “The 1st plaintiff protested the entire process upon which the adjudication was done, balloting and eventual allocation of the subdivided land in the adjudication section on 5th May, 2015 through his letter to the Principal Land Adjudication and Settlement Officer, Narok which complaint was dismissed vide a letter dated 9th February, 2016 by Ruth M. Muli, the District Land Adjudication and Settlement Officer, Narok North.”
19. Paragraph 18 reads: -
- “The dismissal of the 1st plaintiff's complaint prompted the 1st plaintiff to lodge a complaint with the Interested Party of which he did on 4th October, 2019 which complaint was duly received by the Interested Party.”
20. The plaintiff's went on to plead particulars of breach of statutory provisions by the defendants as contained in the subsequent paragraphs.
21. The Land Adjudication Act provides a dispute resolution mechanism where any party aggrieved with the adjudication process within an area declared as an adjudication section can present their grievances. Before seeking recourse from the court, a party ought to exhaust all available remedies provided for in the Act unless stated otherwise.



22. The plaintiffs in their submissions argued that they have pleaded various violations of the statutory provisions of the law with regard to the appointment of a private surveyor, the failure to publish the requisite notices, the failure of the 1st and 2nd defendants to avail the requisite adjudication register and demarcation map and violation of their constitutional rights to property as envisaged under Article 40 of the Constitution.
23. While relying on the cases of *Oraro v Mbajja* [2005] eKLR and *Kipsiwo Community Self Help Group v Hon. Attorney General & 6 Others*, Eldoret ELC Petition No. 9 of 2013, the plaintiffs submitted that this court has jurisdiction to hear all matters relating to land and determine alleged violations of the Constitution which require scrutiny of the evidence presented.
24. Whereas I agree with the plaintiffs that this court has jurisdiction to hear and determine all matter relating to land, the Constitution has also donated similar powers to other bodies or agencies with requisite jurisdiction to do so.
25. Section 29 of the Land Adjudication Act provides as follows: -
- “(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.”
26. From the pleadings, the plaintiffs had a recourse provided in law under the Land Adjudication Act. They admitted that the suit property was within an adjudication section and therefore, they were confined to follow the procedure as outlined in the Act. The plaintiffs have not pleaded that they filed any objection within the period stipulated. What appears to have taken place is a response denying them their request to file an objection owing to lapse of time. In my view, the plaintiffs had a recourse under Section 30(3) of the Land Adjudication Act to appeal to the Minister over the denial or lack of an opportunity to file objection proceedings.



27. In the case of *Speaker of the National Assembly vs. James Njenga Karume* [1992] eKLR the Court of Appeal held: -

“...where there was a clear procedure for the redress of any particular grievance prescribed by the *Constitution* or an Act of Parliament, that procedure should be strictly followed.”

28. In my view, the plaintiffs failed to exhaust the dispute resolution mechanisms provided under the Act and for this reason, this court cannot come to their aid at this stage.

29. The issues raised particularly in paragraph 13 of the amended plaint which reads: - “Nokorte Ole Tanin and Turanta Ole Tanin as members of the adjudication committee were tasked to come up with a complete list of persons who lived in the ancestral land in the adjudication section and to the 1st Plaintiff’s dismay, left out the entire family of the 1st plaintiff.”, would have been fit for an objection before the adjudication committee.

30. From the above, I find merit in the Notice of Preliminary Objection dated 7th July, 2023. The amended plaint dated 31st January, 2023 is hereby dismissed with costs to the 3rd, 4th and 5th defendants.

Orders accordingly.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 26TH DAY OF FEBRUARY, 2024.

HON. MBOGO C.G.

JUDGE

26/02/2024.

In the presence of: -

Mr. E. Meyoki – C/A

and in the absence of:-

The counsel for the plaintiffs

The counsel for the 1st and 2nd defendants

The counsel for the 3rd to 5th defendants

