



**Lekalepi & another v Land Adjudication and Settlement Officer Samburu County; Kapenguria & 2 others (Sued as Chairman, Secretary, and Treasurer) Tinga Group Ranch) (Interested Party) (Civil Appeal 227 of 2018) [2023] KECA 1465 (KLR) (24 November 2023) (Judgment)**

Neutral citation: [2023] KECA 1465 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL 227 OF 2018  
J MOHAMMED, LK KIMARU & AO MUCHELULE, JJA  
NOVEMBER 24, 2023**

**BETWEEN**

**CHRISTOPHER LEKALEPI ..... 1<sup>ST</sup> APPELLANT**

**GEORGE LANYASUNYA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**LAND ADJUDICATION AND SETTLEMENT OFFICER SAMBURU  
COUNTY ..... RESPONDENT**

**AND**

**DAVID LEADUMA KAPENGURIA LENARUM CHRISTINE LETTIA (SUED  
AS CHAIRMAN, SECRETARY, AND TREASURER) TINGA GROUP  
RANCH) ..... INTERESTED PARTY**

*(Being an appeal from the judgment of the Environment and Land Court (Judicial Review Case) at Nyeri (L.N.Waithaka, J.) delivered on 2nd October 2018 in ELC JR Case No. 7 of 2017)*

**JUDGMENT**

1. This is an appeal from the decision of the Environment and Land Court (ELC) (L.N. Waithaka, J.) that was delivered on October 2, 2018. The court dismissed with costs a notice of motion that the appellants, Christopher Lekalepi and George Lanyasunya, had filed seeking a judicial review order of *mandamus* directed at the respondent, Land Adjudication and Settlement Office Samburu County, requiring him to perform his statutory duty under the [Land Adjudication Act](#) (the Act) by convening a meeting to resolve all the disputes arising from the survey process of compilation of the group register, and the entire adjudication of Tinga Group Ranch.



2. Aggrieved by the decision, the appellants filed this appeal whose grounds as contained in the Memorandum of Appeal dated November 30, 2018 were as follows:-

- “1) That the trial judge erred in law and in fact in arriving at a judgment against the weight of the evidence which was presented before her.
2. That the trial judge erred in law and in fact in finding that the letters were written by the applicants demonstrating the existence of a dispute within the Tinga Group Ranch could not suffice to enable the respondent to summon all the parties and resolve the existing dispute.
3. That the trial judge erred in law and in fact in failing to compel the respondent to call for a meeting and resolve the disputes within Tinga Group Ranch when the respondent had stated in court that he was ready to call for the meeting and resolve the dispute.
4. That the trial judge erred in law and in fact in finding that the court cannot compel the respondent to perform his statutory duties unless the appellant has made a request for a meeting for the resolution of the dispute.
5. That the trial judge erred in law and in fact in effectively finding that a letter requesting the respondent to call for a meeting and resolve the disputes of the Group Ranch ought to have been in a specific form and that the letters which had been written by the appellant could suffice.”

The appellants asked that the appeal be allowed, the order of *mandamus* be issued and that the costs of the appeal and those in the ELC be granted.

3. Our jurisdiction as the first appellate court is to subject the whole of the evidence before the trial court to a fresh and exhaustive scrutiny and to make independent conclusions thereon, bearing in mind that we did not have the opportunity to see and hear the witnesses. This duty was expressed in *Selle & another -v- Associated Motor Boat Co. Ltd & others* [1968] E.A 123, at page 126 in the following terms:-

“An appeal to this Court from the trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”

4. A brief background of this dispute is necessary. Tinga Group Ranch, the interested party herein, is a community ranch in Suguta area in Samburu County, and its chairman, secretary and treasurer are David Leaduma, Kapenguria Lenarum and Christine Letitia, respectively. It is the owner of Samburu/Suguta/Marmar“A”/27 which measures 6438 Hectares. On December 16, 1991 the Director of Land Adjudication and Settlement gave consent for the dissolution of the interested party as a group ranch, and directed that it gets consent from the Samburu Land Control Board to subdivide the ranch so that every registered member could be allocated an individual plot. It does appear that the consent was obtained. The officials embarked on the process of surveying the group ranch and subdividing it into individual plots and allocating the same to respective members.
5. The appellants are members of the interested party. They filed this dispute following their complaints that the subdivision was not being conducted transparently and fairly, and which in their view was to their disadvantage. Some of the other complaints were that some parcels did not have names of beneficiaries; some parcels were too small; public utilities had not been reflected; some members had been allocated uninhabitable land; there was no progress report on the subdivision; and there was no



transparency in how the officials were using funds. The appellants wanted the entire exercise to be halted, and there be investigations as there was no integrity in what was going on.

6. One letter of complaint was undated and came from “All Group Members” but signed by the appellants and others and addressed to the “CEC” Ministry of Lands of Samburu County. It was copied to D.C. Samburu Central, County Lands Officer, County Surveyor and National Land Commission. The second letter was dated 19<sup>th</sup> March 2017, addressed to the Land Adjudication and Settlement Officer Samburu Central, signed by the 2<sup>nd</sup> appellant and other members, and copied to several agencies, including the Director of Lands, CEC Lands Samburu, National Land Commission and County Commissioner Samburu. The last complaint was contained in a letter dated April 18, 2017 by “Tinga A Group Ranch Aggrieved members” addressed to “The Lands Foundation & Settlement Officer Samburu County” and copied to several agencies, including CEC Lands Samburu, Director Group Ranches and Settlement Nairobi and National Land Commission Samburu County.
7. In the notice of motion dated October 30, 2017 under Order 53 rule 3 of the [Civil Procedure Rules](#), the appellants, after obtaining leave and stay, sought:-

“2. That this court issues an order of *mandamus* directed at the respondent and requiring him to perform his statutory duty under the [Land Adjudication Act](#) by convening a meeting to resolve all the disputes arising from the survey process, compilation of the group register, and the entire adjudication of Tinga Group Ranch.”

8. The grounds on which the motion was based were that the interested party was an adjudication section established under the Act, and that its officials were being sued in both their private and official capacity; that the respondent had been mandated under the Act to oversee the entire process of land adjudication and creation of individual titles, and under sections 9, 19 and 26 of the Act required to hear and determine all disputes relating to the survey and compilation of the other register before individual interests are submitted to the Land Registrar for registration; that the respondent and the interested party had been working in concert and that, despite there being outstanding disputes, they were going on with the survey work and were in the process of compilation of the final register for submission to the land registrar for registration; that such registration would be prejudicial to the interests of the applicants in view of the unresolved issues; and that, the appellant’s complaint was that there was –

“failure on the part of the respondent and the interested party to convene a meeting for the resolution of the disputes” which was a failure to perform a statutory function.

9. David Leaduma, the chairman of the interested party, filed a replying affidavit to oppose the motion. His case was that the process of subdivision and surveying of the group ranch was being conducted in a transparent, open and fair manner, and that the interests of the appellants should not be allowed to adversely affect the interests of the remaining 383 members of the group who were all satisfied with the process. He stated that, in the list that the appellants annexed to the motion, 46 members were deceased, 40 signatures were a forgery and that 21 names had been repeated. This issue had been referred to Criminal Investigations Division (CID) to investigate. Further, the chairman swore that the [Constitution](#) for the interested party provided for an alternative dispute settlement mechanism which the appellants had not exhausted before filing the motion, and this raised a jurisdictional issue. Lastly, he deponed that, before coming to court in the instant motion, the appellants had filed a suit and motion in ELC No 335 of 2017 in Nyahururu and JR No 11 of 2017 at ELC in Nyahururu, matters he had not disclosed herein; and that upon failure to obtain orders in the Nyahururu causes, and upon the issue being pointed out, he had hurriedly withdrawn the same.



10. Together with the replying affidavit, the interested party filed a notice of preliminary objection on several grounds. One was that the court with the territorial competence to handle the disputes was the ELC in Nyahururu. Two, that the application was res judicata in view of JR No 11 of 2017 ELC Nyahururu; three, that the application was bad in law, incompetent and offended the provisions of Order 53 of the *Civil Procedure Rules* and the *Law Reform Act*. Fourth, that the application was in bad faith, was misconceived and an abuse of the process of the court as it amounted to forum shopping.
11. The ELC heard the application. The respondent had not filed any affidavit in the matter, but had appeared through counsel who had indicated that he was willing to convene a meeting to do that which he was being accused of not doing. The learned Judge held that the appellants had not proved that there was a request addressed to the respondent to convene a meeting of the interested party for the purpose of resolving their dispute or that the respondent had failed to heed to the request. The application was consequently dismissed with costs.
12. This is the decision that led to this appeal. Before us, learned counsel Mr. Githui appeared for the appellants and learned counsel Mr. Gisemba appeared for the respondent. The interested party's counsel did not attend. Mr. Githui had filed written submissions which he highlighted. Mr Gisemba did not file any submissions and opted to rely on the decision of the ELC which he defended. Learned counsel for the interested party had filed written submissions which we have considered.
13. We consider that the ELC did not determine the question whether the appellants had failed to exhaust the interested party's internal dispute resolution mechanism before filing the notice of motion. Neither did it address and resolve the question whether failure to inform the court about the previously filed suits had compromised the motion and disentitled the appellants of the orders they had sought. Further, the court did not determine the question whether there was a statutory duty imposed on the respondent to constitute a meeting of the members of the interested party for the purpose of resolving the dispute in question. Lastly, the court did not resolve the question whether the respondent, by agreeing to be let to do that which the appellants were seeking in the notice of motion, had conceded to the notice of motion, and therefore that the prayers ought to have been granted.
14. It was evident from the record before the ELC that it had been addressed extensively by the appellants and the interested party in the written submissions that they had filed. The parties were entitled to have all these issues considered by the court and a determination rendered on each of them.
15. We are mindful of our jurisdiction on appeal, which is to retry the case that was before the ELC and reach own conclusions on the issues raised while minding that we did not see or hear the parties.
16. It is clear to us that the letters referred to by the appellants raised various issues that they sought to be determined by the various agencies they had written to, and copied the letters to. The respondent is "the Land Adjudication and Settlement Officers Samburu County." The second letter, dated March 19, 2017, was addressed to "the Land Adjudication and Settlement Officers Samburu Central." That would not be the respondent. The last letter, dated April 18, 2017, was addressed to "The Lands Foundation and Settlement Officer Samburu County." That would not be the respondent.
17. Sections 9, 10, 19 and 26 of the *Act* were the basis of the appellant's notice of motion. Section 9 provides as follows:
  1. The adjudication officer shall be in charge of and shall exercise general supervision and control over the adjudication.
  2. The adjudication officer shall hear and determine—



- a. any petition respecting any act done, omission made or decision given by a survey officer, demarcation officer or recording officer; and
- b. any objection to the adjudication register which is submitted in accordance with section 26 of this Act.

Section 10 provides as follows:-

1. The adjudication officer shall have jurisdiction in all claims made under this Act relating to interests in land in the adjudication area, with power to determine any question that needs to be determined in connexion with such claims, and for that purpose he shall be legally competent to administer oaths and to issue summonses, notices or orders requiring the attendance of such persons or the production of such documents as he may consider necessary for the carrying out of the adjudication.
2. The adjudication officer may himself exercise all or any of the powers which are given by this Act to officers subordinate to him.

Section 19 of the Act states as follows:-

1. Subject to subsection (2) of this section, the recording officer shall consider all the claims made in pursuance of the notice published under section 5 of this Act, and, after such investigation as he considers proper, shall prepare in duplicate, in accordance with section 23 of this Act, a form in respect of every parcel shown on the demarcation map.
2. If there are two or more conflicting claims to an interest in land and the recording officer is unable to resolve the conflict, he shall submit the dispute to the committee to decide.
3. The recording officer shall rectify the forms in accordance with any decision which the adjudication officer, the committee or the board may make in accordance with this Act.
4. The recording officer shall perform and exercise his duties under this section in accordance with the general or particular directions of the adjudication officer.

Section 26 of the Act states as follows:-

1. Any person named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer in writing, saying in what respect he considers the adjudication register to be incorrect or incomplete.
2. The adjudication officer shall consider any objection made to him under subsection (1) of this section, and after such further consultation and inquiries as he thinks fit he shall determine the objection.

18. To begin with, the interested party's contention was that there was no adjudication register that had been prepared that would have formed the basis for the complaints by the appellants. There was no response to that contention. In fact, in the application, it was pleaded that the interested party was going on with the survey work with a view to compiling the adjudication register to be able to submit to the Land Registrar. It would appear to us that, from the wholesome reading of these sections, the discharge of duty and/or power of the respondent, if he was the one to whom the complaints and the objections had been raised, did not commence until there was published an adjudication register for the Group Ranch. It was after the publication of such a register that the appellants, or any other aggrieved member of the Group Ranch, would formally file objections with the respondent for resolution. To



put it differently, if there was no register published by the time of the notice of motion, then the claim had been brought prematurely.

19. The notice of motion complained that the respondent had failed in his duty to convene a meeting of the Group Ranch to resolve all disputes arising from the survey process; that, following the complaints, the respondent was under a statutory duty under section 9 of the Act to convene the meeting but that he had failed to do it. In our view, section 9 did impose upon the respondent the duty to convene the Group Ranch’s meeting. The respondent was to supervise the adjudication, specifically to hear and resolve any complaint in regard to a survey officer, demarcation officer or recording officer, as these were the officers under his charge. The rest of the affairs of the Group Ranch were to be resolved by its committees and special and general meetings convened for that purpose. The respondent, we find, had no statutory duty to convene a meeting of the Group Ranch to resolve its disputes with the members. Infact, given what we have said on the foregoing, it is clear that the Group Ranch had a mechanism of resolving its internal disputes which the appellants had not exhausted. Therefore, the interested party’s response to the notice of motion that the proceedings were premature because no reference had been made to the internal dispute resolution mechanism as was required by the Group Ranch Constitution was a legitimate one. It is trite that where there is an alternative legal remedy, the order of *mandamus* will not normally issue (*Republic –v- Kenya National Examinations Council exparte Gatbenji and 9 Others* [1997]eKLR). Indeed Article 7 of the Group Ranch’s constitution provided that –

“7. Each member has a right to attend AGM and call for a special general meeting when there is need.”

There was no evidence that the appellants and the “aggrieved members” requisitioned for a general or special meeting but that none was convened.

20. In *Jocinta Wanjiru Raphael –v- William Nangulu & Others* [2014]eKLR, it was reiterated that: -

“Therefore where there is an alternative remedy which is more convenient, beneficial and effectual the court in the exercise of its undoubted discretionary power would decline to grant an order of *mandamus*.....”

21. We have, however, found in the foregoing that the appellants were seeking to compel the satisfaction of a public duty that had not become due. We have also found that there was no evidence that the respondent was addressed by the appellants to do anything, leave alone convening a meeting; and that, the convening of such a meeting was not one of his duties under the Act.
22. For these different reasons, we agree with the ELC that proceedings by the appellants were for dismissing. The result is that the appeal lacks merit and is dismissed with costs.

**DATED AND DELIVERED AT NYERI THIS 24<sup>TH</sup> DAY OF NOVEMBER 2023**

**JAMILA MOHAMMED**

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**JUDGE OF APPEAL L. KIMARU**

.....

**JUDGE OF APPEAL**

**A. O. MUCHELULE**

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**JUDGE OF APPEAL**

*I certify this is a true copy of the original.*

*Signed*

**DEPUTY REGISTRAR**

