



REPUBLIC OF KENYA



KENYA LAW
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Washe & another v Kaduka & 13 others (Environment & Land Case 155 of 2015) [2023] KEELC 308 (KLR) (23 January 2023) (Ruling)

Neutral citation: [2023] KEELC 308 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 155 OF 2015**

**MAO ODENY, J
JANUARY 23, 2023**

BETWEEN

JAPHETH KALAMA WASHE 1ST PLAINTIFF

PATRICK MONO MBURA 2ND PLAINTIFF

AND

CHRISPUS DECHE KADUKA & 13 OTHERS DEFENDANT

RULING

1. This ruling is in respect of a notice of motion dated November 29, 2021 by the defendant/applicants seeking the following orders: -
 - a. Spent
 - b. Spent.
 - c. That the court do order the striking out of the suit herein for want of prosecution and in the alternative.
 - d. That upon hearing this application interpartes the court be pleased to order stay of proceedings herein as the suit contravenes the mandatory provisions of section 30 and section 8 (1) of the [Land Adjudication Act](#) chapter 284 and [Land Consolidation Act](#) chapter 283 Laws of Kenya respectively.

Applicant's Submissions

2. The application was supported by the affidavit of Chrispus Deche Kaduka sworn on the November 24, 2021 where he deponed that on September 28, 1998, the *chief's baraza* (land committee) declared that the disputed parcel of land herein belongs to the late Kaduka Tsuma and not Washe Mono (the 1st plaintiff's father).



3. That being aggrieved with the findings of the *chief baraza*, Washe Mono filed a suit which suit was dismissed by the court on October 13, 1999 on the ground that it should be handled by the Land Disputes Tribunal.
4. He also deponed that on April 11, 2002, the Land Dispute Tribunal ruled in favour of the late Kaduka Tsuma further that the survey was compromised and the disputed property irregularly registered in the names of Japhet Kalama Washe and Patrick Mono Mburu.
5. It was the applicant's averment that on June 21, 2021 the Chonyi Community petitioned the Chairman Land Adjudication and Settlement Committee Kilifi County whereby the petition was heard and a fresh survey conducted.
6. He further asserted that on September 24, 2021 the government surveyors visited the property and it was given plot number 513 for the Waremere clan, the 2nd, 5th, 10th and 14th defendants and plot number 514 for the 3rd, 4th, 7th, 9th, 11, 12th and 13th defendants.
7. The applicant further stated that they realized that Peter Dzombo Mwavhiru had encroached into their land and irregularly obtained plot number 567 during the survey which is within plot number 513. Consequently, he filed a case before the Sub County Land Adjudication and Settlement officer and awaiting verdict as the plot is subject within an adjudication area and the court lacks jurisdiction to entertain the suit herein until the adjudication register for the area has become final.
8. Counsel submitted that the court lacks jurisdiction to hear and determine this matter as the area where the suit land is situated was declared an adjudication area on November 11, 2015 whereby adjudication is ongoing.
9. Mr Jengo further submitted that the adjudication register for Chengoni/Mtomkuu adjudication section Kilifi has not become final or published as the exercise is ongoing, hence the plaintiffs are obliged by law to file a consent from the Land Adjudication Officer consenting to the continuance of the instant proceedings which the plaintiff has not produced any evidence to confirm the same.
10. It was counsel's submission that proceeding with the matter would be in violation of section 30 and 8 (1) of the *Land Adjudication Act* and *Land Consolidation Act* respectively and further relied on the cases of *Benjamin Okwaro Estika vs Christopher Antony Ouko & Another* (2013) eKLR, *Jackson Koome vs M'mlimongi & 2 others* (2018) eKLR and that of *Thomas Kinyori Hussein & 3 Others vs Mokha Mghanga & 2 others* (2018) eKLR
11. Mr Jengo also submitted that the consent annexed to the affidavit was granted for only sixty (60) days by the Land Adjudication & Settlement Officer Kilifi North and that time ran from March 16, 2022 and lapsed on May 16, 2022.

Plaintiff/Respondent's Submissions

12. The plaintiffs/ respondents in response filed grounds of opposition and a replying affidavit whereby he annexed a copy of the consent form the Land Adjudication Officer
13. Counsel submitted that no explanation has been advanced for bringing the application six years down the line while counsel has been on record for the defendants since 2015. Further that the defendants admitted that the court has jurisdiction to hear and determine the suit therefore they are estopped from denying such jurisdiction.



Analysis And Determination

14. The issue for determination is whether this court has jurisdiction to hear and determine this matter pursuant to the provisions of section 30 of the [Land Adjudication Act](#).
15. The jurisdiction of the Land Adjudication Officer is set out under section 10 of the [Land Adjudication Act](#) that provides that; -

“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 connection with such claims....”
16. Section 30(1) of the [Land Adjudication Act](#) chapter 284 of the Laws of Kenya provides as follows; -

“Except with the consent in writing of the adjudication officer, no person shall institute, and no court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under section 29(3) of this act.”

 - (2) Where any such proceedings were begun before the publication of the notice under section 5 of this act, they shall be discontinued, unless the adjudication officer, having regard to the stage which the proceedings have reached, otherwise directs.
 - (3) Any person who is aggrieved by the refusal of the adjudication officer to give consent or make a direction under subsection (1) or (2) of this section may, within twenty-eight days after the refusal, appeal in writing to the minister whose decision shall be final.”
17. When this matter came up for mention after the defendant had filed the current application, the court ordered that the Land Adjudication Officer file a report in court to confirm whether the suit land is within an area that had been declared as an adjudication area which was duly filed.
18. The report was filed on March 17, 2022 where the Land Adjudication Officer confirmed that the Chengoni Mto Mkuu was declared an adjudication section vide a letter dated November 11, 2015.
19. It should be noted that this matter has had many false starts as at one point it had been dismissed for want of prosecution but it was reinstated for hearing.
20. The provisions of section 30 (1) of the [Land Adjudication Act](#) are clear that a litigant who wishes to file a case where a suit land falls within a declared adjudication, then such party must seek and obtain a consent from the Land Adjudication Officer before filing such a case. If the Land Adjudication Officer refuses to give such consent, then he or she must give a reason to enable the party to move to the court for redress.
21. I will not belabor much on this application as it is on record that the applicant sought and was granted a consent to maintain this case in court. Counsel for the applicant misinterpreted that the consent was only for a limited period hence it had lapsed.
22. The consent reads that it is valid within 60 days and if the case is not filed within that period then it lapses. The case is still pending in court hence with due respect counsel’s interpretation of the lapse is not tenable.
23. The consent also stated that he would require a copy of the final orders of the case to enable him complete the adjudication area register. This is a 2015 matter which should be fast tracked to enable the



court to give final orders for the completion of the adjudication register. Filing of many applications are delaying this matter which should be heard and finalized.

24. I have considered the application, the submissions by counsel and find that the application lacks merit and is therefore dismissed with costs to the respondent. matter to be fixed for hearing on a priority basis due to the age of the case.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 23RD DAY OF JANUARY, 2023

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M.A. ODENY JUDGE

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules

