



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC APPEAL NO. 136 OF 2019

ALFRED KARUMBA M'ANAMPIU.....PLAINTIFF

VERSUS

JERUSHA MUIRURI M'MITARU.....1ST RESPONDENT

SUB-COUNTY LAND ADJUCIATION &

SETTLEMENT OFFICERTIGANIA WEST.....2ND RESPONDENT

HON. ATTORNEY GENERAL.....3RD RESPONDENT

(Being an appeal from the Ruling of Hon. G. Sogomo (P.M.)

delivered on 14th November, 2019 in Tigania E & L. No. 81 of 2017)

JUDGMENT

1. By an appeal dated 13.12.2019 the appellant seeks to overturn the lower court ruling in which the trial court held it lacked jurisdiction.

2. In the trial court the appellant had sued the respondents claiming a portion of **2.50 acres** of his **Parcel No. 54 Uringu II Adjudication Section, Tigania adjudication section** at adjudication records stage had been hived off through an objection **No. 1405 of 2010** brought by the 1st respondent to which the 2nd respondent acceded to contrary to previous committee cases. He averred the 1st respondent's claim if any ought to have been on a different location.

3. Further the appellant averred out of his complaint, the 2nd respondent stopped the implementation of the excision. He sought for the court to declare the decision to excise his land illegal, unconstitutional, inequitable, null and void and asked for a permanent injunction stopping the implementation of the objection.

4. The 1st respondent denied the claim through a defence dated **24.10.2011** and maintained the decision in objection **No. 1405 of 2010** was rightly and justly arrived at so as to recover land which the appellant had illegally and unlawfully taken as part of her land in previous committee cases.

5. Further the 1st respondent averred the 2nd respondent had correctly applied the law in arriving at the decision and pleaded that the suit was defective, an abuse of the court process and sought to raise a preliminary objection.

6. There is no record that the 2nd and 3rd respondents ever entered appearance and or were served with summons to enter appearance.

7. The appellant did not respond to the defence. Be that as it may the 1st respondent filed a notice of preliminary objection dated 11.4.2010 on the following grounds:-

1) Under the Land Adjudication Act and Land Consolidation Act the court lacked jurisdiction.

2) Sections 13, 29, 21, 26 and 29 of Land Consolidation Act the court could not entertain the suit.

3) The appellant had not exhausted the remedies under the Land Adjudication Act.

8. Meantime, the lower court record shows the appellant on **21.6.2016** complied with **Order 11 of Civil Procedure Rules**, filed a case summary and issues for termination namely:-

i. Whether Parcel No. 54 is ancestral land.

ii. Locality of the disputed land

iii. If the 2nd respondent had stopped implementation of the decision on 2.2.2011.

iv. Who is the intimate owner of the suit land.

9. Turning to the preliminary objection parties with leave of court put in written submissions dated 6.11.2019 and 22.10.2019 respectively.

10. The 1st respondent submitted the suit offended **Sections 23, 24, 25, 26 and 27** of the **Land Consolidation Act** as the only way for the appellant was to prefer a Ministers' appeal within 60 days if he was aggrieved by the decision thereof.

11. Further, it was submitted that failure to do so meant the adjudication register shall be final and that since the appellants' suit is over the decision making process and the decision itself on account of fraud, illegality and conspiracy, the court's role could be to determine ownership hence urged the court under **Order 2 Rule 15 (1)** of the **Rules** to strike out the suit with costs.

12. On the other hand, the appellant submitted there were three objections **No 105 of 1970, No. 227 of 1977 – 78** in committee stage objection **No. 2154** determined in 1979 in his favour and thereafter at A/R stage, objection **No. 678 of 2010** determined in 2010. All these objections had been determined in his favour. Subsequently objection **No. 1405** was brought by the 1st respondent in which his 2.50 acres was hived off and given to her.

13. Further the appellant submitted that **Section 26 (3)** of **Land Consolidation Act** allowed him to move to court and not the Minister, hence he was properly before the court.

14. The appellant by this appeal complains the trial court did not follow the two **Acts** in arriving at its decision hence reached the wrong decision.

15. This being an appeal of first instance, the court is required to look at the lower court file and come up with its own conclusion as to facts, law and evidence so as to determine if the trial court reached a correct decision.

16. The appellant had been issued with a consent to sue dated 28.2.2011 by the District land Adjudication Officer Tigania West District. The consent has given under **Section 8 (1)** of the **Land Consolidation Act** and **Section 30** of **Land Adjudication Act** for the claim between him and the 1st respondent. There was no consent given to sue the 2nd and 3rd respondents. Indeed it appears the person or office which gave the consent turned out to be sued as the 2nd respondent.

17. In the list of documents accompanying the plaint, the appellant listed the consent award in **1405 of 2010**, a statutory notice to

the 3rd respondent, letter of complaint to the 2nd respondent and his remarks on 2.2.2011 and a letter to the 2nd respondent dated 24.2.2011.

18. As can be seen from the pleadings the appellant's claim came as a result of an objection brought under both **Land Consolidation Act** and **Land adjudication Act**. The basis of the claim is that it was irregularly done. The appellant has not particularized in the plaint an illegality, impropriety, unconstitutionality, fraud or conspiracy between the respondents.

19. Further the appellant did not plead which process the 2nd and 3rd respondents did not follow. As can be seen from the statutory notice, what the appellant is claiming is the merits and demerits of the decision out of an alleged late objection at adjudication Record Stage and which was contrary to earlier objection touching the land.

20. The court has gone through the previous award listed as **No. 3** in the list of documents against the award in **No. 2** in the same list. The 2nd respondent gives a chronology of the dispute over **Parcel No. 74** from **1970 to 2010**.

21. In my considered view therefore, if the appellant was aggrieved by the decision he ought to have submitted himself to the internal mechanisms as set out under **Cap 283** and **284** respectively.

22. As has been held in various cases, the process of ascertainment and registration of interests on trust land is the mandate of the land adjudication committee as per the **Land Consolidation Act** and land adjudication officer under the **Land adjudication Act**. The centrality of both land adjudication committee and land adjudication officer respectively in the two **Acts** cannot be gainsaid. See *Tobias Ochola Osidi & 13 Others –vs- Cyprianus Otieno Ogalo & 6 Others [2013] eKLR.*

23. It is therefore important for the parties to submit themselves to the jurisdiction of the bodies set out under the aforesaid Acts who are best suited to ascertain and register their rights as to land before resorting to court.

24. The appellant sought the court to declare the decision to excise 2.50 acres by the 2nd respondent in favour of the 1st respondent illegal, unconstitutional, inequitable, arbitrary, null and void and for a permanent injunction to stop its implementation.

25. There is already an appeal mechanism set out under **Sections 26 (1)** and **Section 3** of **Land Consolidation Act** and **Land adjudication Act**. This court would be usurping powers it does not have if it were to accede to that request and stifle alternative dispute mechanisms as set out under **Article 159 (1) (c)** of the **Constitution** and **Section 13** of the **Fair Administrative Act 2015**.

26. There are no exceptional circumstances demonstrated in this suit why the court should entertain the suit in place of the Minister and secondly why the court should descend to the arena of declaring rights and interests over land under the **Land adjudication Act** and the **Land Consolidation Act**.

27. In my view the learned trial magistrate correctly applied the law based on the facts obtaining in this suit and reached right decision.

28. In the premises, I find the appeal lacking merits. The same is dismissed with costs to the 1st respondent.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 1ST DAY OF DECEMBER, 2021

IN PRESENCE OF:

MISS GIKUNDI FOR APPELLANT

MUTUMA FOR 1ST RESPONDENT

KIETI FOR 2ND AND 3RD RESPONDENT

COURT ASSISTANT - KANANU

HON. C.K. NZILI

ELC JUDGE



While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-ShareAlike 4.0 International](#), the texts of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)