



Case Number:	Environment & Land Case 181 of 2016
Date Delivered:	07 Dec 2017
Case Class:	Civil
Court:	Environment and Land Court at Malindi
Case Action:	Ruling
Judge:	James Otieno Olola
Citation:	Julius Katana Kithi & another v Franklin Vuru Chiruu & 5 others [2017] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Land and Environment
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	Suit dismissed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**LAND CASE NO. 181 OF 2016**

**1. JULIUS KATANA KITHI**

**2. JACKSON SANTA MUSINDA.....PLAINTIFFS**

**VERSUS**

**1. FRANKLIN VURU CHIRUU**

**2. BAYA CHIRUU BAYA**

**3. VINCENT ALEX VURU**

**4. AMOS ZOKA NDUNE**

**5. MOSES BAYA NDUNE**

**6. ENOCK TAWA NDUNE**

**7. JONATHAN BAYA NDUNE.....DEFENDANTS**

**RULING**

1. By a Plaint dated and filed herein on 15<sup>th</sup> July 2016, the two Plaintiffs Julius Katana Kithi and Jackson Santa Musinda pray for the following:-

***(a) An order to be served (upon) the Kilifi County Demarcation and Settlement Officer, so as the suitland known as Miyuni/Mleji 'B' Parcel and/or Plot Nos. 1522, 1523, 1524, 1525, 1526, 1697 and 1698, can be cancelled and become re-registered as one parcel of land under one parcel number and in the names of the Plaintiffs.***

***(b) A permanent order of injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants themselves, or by their agents, servants/workmen and women, or otherwise howsoever from trespassing, encroaching, alienating, sale, removal, wasting, damaging, or parting with possession of the suitland known as Miyuni/Mleji "B" Parcel and/or Plot No.s 1522, 1523, 1524, 1525, 1526, 1697 and 1698 and/or dealing with the entire suit premises in any manner whatsoever.***

***(c) Costs of this suit and interests.***

2. It is the Plaintiffs case that all material times, they were the legal beneficial owners of the suit property. The Plaintiffs who are acting in person further give the basis of their claim at paragraphs 7 and 8 of the Plaint thus:-

**7. The suitland was demarcated and numbers for the segments were given by the demarcation officer and the same defendants (have) been warned not to carry on activities within the suitland but have ignored and maliciously threatened to deal with the Plaintiffs and their families.**

**8. The suitland was sub-divided to have Parcel and/or Plot Nos. 1522, 1523, 1524, 1525, 1526, 1697 and 1698, without the knowledge and consent from the Plaintiffs or their family members.**

3. The seven (7) Defendants are however opposed to the grant of the prayers sought by the Plaintiffs. In Written Statement of Defence filed herein on 2<sup>nd</sup> August 2016, the Defendants aver and maintain that the land in question has never belonged to the Plaintiffs and that the Plaintiffs have never been in possession or occupation thereof.

4. It is further the Defendants case that the suitland was declared an adjudication area in 2014 after which the land adjudication process began in 2015 and is still on-going. The Defendants further state that the Plaintiffs have themselves filed various objections before the Land Adjudication Officer which are yet to be heard and it is therefore their position that this case is improperly before the Court.

5. On the same day they filed their Written Statement of Defence, the Defendants also filed a Notice of Preliminary Objection giving notice that they shall at the earliest possible opportunity raise a Preliminary Objection to the Plaintiffs' suit on the following grounds:-

**1. That the Plaintiffs suit is an abuse of the Court Process as it offends the express and mandatory provisions of Section 30 of the Land Adjudication Act and seeks to interfere with a lawful process.**

**2. That the Plaintiffs have no cause of action against the Defendants in view of the Land Adjudication Act.**

6. On 19<sup>th</sup> July 2017 when the Preliminary Objection came before me for hearing, I directed the parties to file their submissions thereon within 14 days. As at 2<sup>nd</sup> October 2017 when the matter came up before me, only the Defendants had complied with my directions.

7. I have considered the Notice of Preliminary Objection filed by the Defendants. Section 30 of the Land Adjudication Act Cap 2014 provides as follows:-

**30(1). 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 the 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 subsection (2) of this section may, within twenty-eight days after the refusal, appeal in writing to the Minister whose decision shall be final.**

8. It is clear to me from a perusal of the Plaintiffs' own List of Documents dated and filed herein on 15<sup>th</sup> July 2016 that there were proceedings going on in regard to the land which is the subject matter of this

suit, before the Land Adjudication Officer, Kilifi Adjudication Area. That must be the basis upon which the Plaintiffs have annexed two letters dated 3<sup>rd</sup> June 2016 and 9<sup>th</sup> June 2016 respectively summoning the parties herein to a hearing on their objection which were respectively due for hearing on 15<sup>th</sup> June 2016 and 24<sup>th</sup> June 2016. The Summons are probably what triggered the filing of this suit by the Plaintiffs in which they seek inter alia orders against the Land Adjudication Officer (described as the County Demarcation and Settlement Officer) to have their recommendations cancelled in regard to the suitland.

9. The Defendants have collectively through the 1<sup>st</sup> Defendant Franklin Vuru Chiruu whose statement proclaims him to be the father of the other six defendants, annexed to their list a number of documents which equally leave no doubt that the subject matter of this suit is within an adjudication section envisaged under Section 30 of Cap 284 of the Laws of Kenya.

10. Under the said Section 30 (Cap 284), no person is to institute civil proceedings except with the consent of the adjudication officer, concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final. If a person is aggrieved by the refusal of adjudication officer to give consent, he may appeal against the refusal to the Minister within 28 days. The Minister's decision in this regard is final.

11. In my view, the reasoning behind Section 30 of the Land Adjudication Act is to leave the process of determining the rights of the people within an adjudication area to the mechanism set out under the Act and not to the Courts. It is the people on the ground who best know who is entitled to what area of land that is the subject of an adjudication process. The effect of Section 30 is to remove that determination from the jurisdiction of the Court and to allow the matter to be first determined locally within the guidelines set under the Act.

12. In the present suit, the Plaintiffs have not exhibited any consent from the Land Adjudication Officer for the area giving them authority to file this present case. Instead, the Plaintiffs have themselves listed documents showing that they had been summoned to the District Land Adjudication Office for purposes of a hearing of an objection filed pursuant to the provisions of the Land Adjudication Act. That act provides various mechanisms for redress and appeal which mechanisms had not been exhausted at the time this suit was filed.

13. In the circumstances, I find merit in the Defendants' Preliminary Objection dated 2<sup>nd</sup> August 2016. Accordingly I find and hold that the suit filed herein is premature and offends the express and mandatory provisions of Section 30 of the Land Adjudication Act. The same is struck out with costs to the Defendants.

**Dated, signed and delivered at Malindi this 7<sup>th</sup> day of December, 2017.**

**J.O. OLOLA**

**JUDGE**



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