



Chepngetich v National Land Commission & 6 others (Environment & Land Case E006 of 2022) [2022] KEELC 13826 (KLR) (25 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13826 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE E006 OF 2022
MN MWANYALE, J
OCTOBER 25, 2022**

BETWEEN

LUDIAH CHEPNGETICH PLAINTIFF

AND

NATIONAL LAND COMMISSION 1ST DEFENDANT

COUNTY GOVERNMENT OF NANDI 2ND DEFENDANT

TNANDI COUNTY LAND MANAGEMENT BOARD 3RD DEFENDANT

LAND REGISTRAR NANDI COUNTY 4TH DEFENDANT

**MINISTER INTERIOR AND COORDINATION OF THE NATIONAL
GOVERNMENT 5TH DEFENDANT**

MINISTER OF LANDS AND PHYSICAL PLANNING 6TH DEFENDANT

ATTORNEY GENERAL 7TH DEFENDANT

RULING

1. What is before this court for ruling is the 2nd defendant's preliminary objection dated April 5, 2022 and filed on April 6, 2022.
2. The preliminary objection is premised on grounds that;
 - i. The honourable court herein lacks the requisite jurisdiction to hear and determine this suit as it is.
 - ii. The suit offends the provisions of section 18 (2) of the *Land Registration Act No 3 of 2012* which vests boundary disputes of registered land in the land registrar.
 - iii. The suit is misconceived in law and amounts to abuse of court's process.



3. The plaintiff and the 2nd defendant, filed submissions pursuant to the directions by the court made on September 20, 2022 to canvass the preliminary objection by way of written submissions.
4. Counsel for the 2nd defendant submitted that from the pleadings and supporting documents filed by the plaintiff in this suit, reference to general boundary dispute falling within the jurisdiction of the land registrar as the first port of call. To buttress this position counsel relied in the Court of Appeal case of *Azzuri Limited -vs- Pink Properties Limited (2018) eKLR* as well as section 18 of the *Land Registration Act*. Further reliance was placed in the case of *Willis Ocbolla -vs- Mary Ndege (2016) eKLR*.
5. On her part, counsel for the plaintiff cited the case of *Mukisa Biscuit 6 Ltd. -vs- West End Distributors (1969) EA* where the court defined the meaning of a preliminary objection.
6. Counsel pointed out that paragraphs 10, 11 and 12 of their plaint showed that the dispute was for trespass as well as compensation after alleged acquisition by the 2nd defendant. Therefore that his court has jurisdiction to entertain this matter. They relied in the case of *Wilson Daniel Ogola -vs- Maurice Ouma Agwedo (2021) eKLR*.
7. This court has considered the preliminary objection, the rival submissions as well as pleadings as a whole and finds the following issues for determination;
 - i. Whether plaintiff's claim is a boundary dispute?
 - ii. If issue (i) is answered in the affirmative, whether the same should be handled by land registrar under section 18 (2) of the *Land Registration Act*.
8. From the pleadings particularly the plaint filed on December 1, 2021, the plaintiff under paragraphs 10 and 11 stated her cause of action as follows;
 - ' 10. On or about the September 17, 1991 received a letter informing her that the then Kapsabet Municipal Council had made a decision to take part of her land NANDI/KAMOBO/1399 with a promise to compensate her with an alternative commercial plot.
 11. The then municipal council met the town planning committee and resolved that the plaintiff was to be compensated and/or allocated a different commercial plot within Kapsabet Municipality.'
9. These averments certainly show that the dispute between the parties herein is not a boundary dispute rather one of acquisition and compensation of land parcel number NANDI/KAMOBO/1399.
10. The *Constitution* under article 162 (2) (b) and section 13 (2) of the *Environment and Land Court Act* cloth this court with the jurisdiction to deal with disputes relating to land and environment. This dispute therefore falls rightly within the jurisdiction of this court.
12. Having found that the plaintiff's claim is not a boundary dispute and that this court has jurisdiction to hear and determine this dispute, the preliminary objection lacks merit and is hereby dismissed with costs to the plaintiff.
13. It is so ordered.

DATED AT KAPSABET THIS 25TH DAY OF OCTOBER, 2022.

HON. JUSTICE M. N. MWANYALE

JUDGE.

Delivered in the presence of;



Ms Chebet for 2nd Defendant

Ms Obino for 1st Defendant

Ms Matoke for the Plaintiff

Mr Odongo for 3rd to 7th Defendants

