



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MERU

JR NO. 18 OF 2016

NTARANGWI M'IKIARA.....APPLICANT

VERSUS

COUNTY GOVERNMENT OF MERU.....RESPONDENT

AND

JACKSON MUNYUA MUTUERA.....INTERESTED PARTY

JUDGMENT

Background

1. These Judicial proceedings was commenced with the filing of an exparte chamber summons dated and filed on 11th July 2016.
2. The exparte applicant sought leave to apply for orders of Judicial Review for prohibition and mandamus against the respondent herein. That application was filed under certificate of urgency. When the said application was placed before the duty Judge, the same was certified urgent and the exparte applicant was granted leave to file for orders of prohibition and mandamus as against the respondent herein. The court also ordered the leave so granted to operate as a stay of the implementation of the respondents demand letters for payment of rates pursuant to a demand notice issued on 14th April 2016. The exparte applicant was also granted leave to file and serve the substantive motion within the statutory period.

Applicant's case

3. The applicant in his statement accompanying the summons for leave stated that he is the registered proprietor of land parcel no. Ntima/Igoki/2224 and that Jackson Munyua Mutuera who is the interested party herein has illegally and unlawfully occupied a portion of his land under the influence of the respondent. The applicant further stated that he has been paying rates for the said plot. The applicant also averred that in the year 2016, he was surprised to receive a rates demand notice showing that his plot has been sub divided into two plots being no. 224 "A" registered in the name of the interested party and 2224 "B" registered in his name. The applicant stated that he was shocked how his land was subdivided and allocated to the interested party and that he has even sued the interested party over the same parcel of land in HCCC No. 202 of 1995 which is still pending in court. He attached a copy of the plaint in the said civil case pending before this Honourable court and numerous rates payment receipts.

Respondent's case

4. The respondent through one of its court executive committee member one Martin Bikuri stated that the suit property parcel no. Ntima/Igoki/2224 was compulsorily acquired sometimes in the year 1977 and that the applicant was duly compensated and has never challenged the alleged acquisition.

5. The respondent further stated that upon acquisition of the suit property, the same became government land and that the government later decided to allocate the land to individuals who were in occupation of the land and had developed the same including the interested party and the applicant herein. The respondent further averred that it was recommended that the suit property be sub-divided into two plots being Ntima/Igoki/2224 'A' and Ntima/Igoki/2224 'B' and the same allocated to both the applicant and the interested party respectively. The said recommendation was implemented vide a letter by the town treasurer of the defunct municipal council of Meru dated 25th April 1995. Some times in the year 1995, the applicant filed a case being case No. HCCC No. 153 of 1995 (OS) in which he was issued with restraining orders restraining the respondent from demanding rates from the interested party over the suit property. The applicant later withdrew the case and the restraining orders issued earlier remained discharged.

Interested party's case

6. The interested party in his replying affidavit sworn on 17th December 2016 stated that he bought the suit property on 5.12.1967 at a consideration of Kshs.2000 and paid the full purchase price. He also stated that he took possession immediately and constructed a timber structure and in the year 1972 he put up a stone building. In the year 1972 it was announced that the whole plot parcel No. Ntima/Igoki/2224 and several other plots surrounding Gakoromone marked would be compulsorily acquired by the government for the expansion of the market.

7. The interested party also averred that in a gazette notice no. 1263, the government acquired the entire suit land and was duly compensated. Subsequent to the compulsory acquisition it was discovered that some of the plots acquired had permanent development on them. It was decided by a plot allocation committee on 8.1.1993 that the developed plots be allocated back to the owners. A surveyor was sent to verify the position whereby it was confirmed that the suit property be split into two (2) plots being no. Ntima/Igoki/2224 'A' and 2224 'B' and allocated to the interested party and the applicant respectively. Following the said allocations, separate ledger cards for payment of rates were opened in respect of the two plots and the interested party has been paying rates in respect of his plot no. Ntima/Igoki/2224 'A'

Submissions by the applicant

8. He did not file written submissions despite having agreed to do so within 30 days from the date of the consent.

Submissions by the respondent

9. The respondent did not also file submissions in this case.

Written submissions by the interested party

10. The interested party through the firm of Ms. Mithega and Kariuki advocates submitted that the decision to allocate plot no. Ntima/Igoki/2224 'A' to the interested party and to open two separate ledgers under plot no. Ntima/Igoki/2224 were done in 1995 and the applicant did not challenge that decision within six (6) months from the said date. It was also submitted that the present proceedings are bad in law and an abuse of the court process.

Decision

11. The applicant in these Judicial review proceedings is seeking orders of mandamus prohibition and/or

declaration directed to the County Government of Meru from issuing demand notices to one Jackson Munyua Mutuera and Ntarangwi M'Ikiara for payment of rates for plot no. Ntima/Igoki/224 and erroneously terming the plot 'A' and 'B' with the consequent effect of illegally donating half the plot to Jackson Munyua Mutuera. To begin, my evaluation, it is imperative to note that the remedy of Judicial review is concerned with the decision making process not the merits of the decision itself.

12. The purposes of Judicial Review proceeding as a remedy is to ensure that the individual is given fair treatment by the decision making body or authority. The judge is not to substitute his own opinion with that of the authority charged/constituted by law to decide the matter in question.

13. From the statement of facts and verifying affidavit in support of these judicial review proceedings, the applicant has attached numerous documents including two demand notices from the county government of Meru addressed to Jackson Munyua Mutwera and Ntarangwi M'Ikiara dated 4th April 2016.

14. The two letters are demanding from each of the two individuals the sum of Kshs.1500/= in respect of plot no. 2224 'A' and 2224 'B' respectively.

15. According to the applicant he is the absolute proprietor of land parcel No. Ntima/Igoki/2224 which he has attached a copy of the title deed for the said land.

16. The applicant has also annexed a plaint in CMCC no. 164 of 1995 (Meru) where the applicant had sued Jackson Munyua Mutuera (Interested party) for inter alia an order of eviction.

17. The applicant has not attached any decision by the respondent showing that the interested party was allocated part of his land parcel no. Ntima/Igoki/2224 and that the process of such decision was illegal, irregular and unlawful.

18. A demand notice is not a decision making process capable of being challenged by way of Judicial Review. The applicant needs to demonstrate to this court that the process in which the interested party was allocated plot no. Ntima/Igoki/2224 'A' was tainted with illegality, irrationality and procedural impropriety. Illegality is when the decision making authority commits an error of law in the process of taking or making the act which is the subject of the complaint. Instances of illegality are where the decision making body acts without jurisdiction or ultra vires or acting contrary to the provisions of a law or principles made thereunder. In the instant case, the applicant is complaining of a notice issued by the respondent to the interested party demanding the payment of rates in the sum of Kshs.1500. That demand notice in my view is the culmination of a process and decision giving the interested party plot no. Ntima/Igoki/2224 'A'.

19. The demand notice does not indicate how the respondent allocated the plot in question to the interested party. The issues that the applicant is seeking are issues that would adequately be adjudicated through another judicial process other than by way of Judicial review. The applicant had attached a plaint in CMCC No. 164/1995 (Meru) where he was seeking an order of eviction. That route in my view is the way to go where issues of ownership would be adequately canvassed. I think it is important to observe that Judicial Review remedies are discretionary powers especially not automatic and where the court is of the view that there is an alternative remedy. The upshot of this application is that it has no merit and the same is hereby dismissed. Each party to bear his own costs.

20. It is so ordered.

READ, DELIVERED AND SIGNED AT MERU IN THE OPEN COURT THIS 28TH DAY OF FEBRUARY, 2019

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E.C CHERONO - JUDGE

In the presence of:

1. Mr. Mwirigi holding brief for M. Kaiuki for the interested party.
2. C/A - Kananu