



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISCELLANEOUS APPLICATION NO. 99 OF 2010

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR ORDER OF CERTIORARI MANDAMUS PROHIBITION

AND

IN THE MATTER OF OBJECTION NO'S 404 AND 1177 FILED AGAINST PARCEL NO'S 155 AND 2096 URINGU II
ADJUDICATION SECTION

BETWEEN

REPUBLIC..... APPLICANT

VERSUS

THE DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER,

TIGANIA WEST DISTRICT.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

AGGREY MURAGA ETHANGATHA.....1ST INTERESTED PARTY

FRANCIS MICHUKI2ND INTERESTED PARTY

EREST KIREMA.....3RD INTERESTED PARTY

JASON K. MEERIA.....4TH INTERESTED PARTY

HENRY ETHAIBA.....5TH INTERESTED PARTY

SILAS MUTHEE MBERIA.....6TH INTERESTED PARTY

JOHNSON KIBARA MBAABU.....7TH INTERESTED PARTY

SAMUEL MUKIRI..... 8TH INTERESTED PARTY

BENJAMIN GITONGA ANDREW.....EXPARTE APPLICANT

ERIC KINOTI.....INTENDED INTERESTED PARTY

JUDGMENT

These Judicial proceedings were initially commenced vide a chamber summons filed under certificate of urgency dated 15th December 2010 where the applicant sought leave to apply for an order of certiorari to remove to this Honourable court the decision by the District land adjudication & settlement officer, Tigania West District dated 30th July 2010 for purposes of being quashed. The exparte applicant also sought an order of prohibition to prohibit the 1st respondent from interfering with land parcel Nos. 2983 and 3420 as recorded in the register and plotted on the map of the area. The exparte applicant was seeking another order of mandamus directed to the 1st respondent, compelling

him to demarcate the parcel no's 2983 and 3420 on the ground and to fix the boundary beacons thereto. The exparte applicant finally sought to have the leave so granted to operate as a stay of the implementation of the decisions of the 1st respondent dated 30th July 2010.

After being granted leave to file for orders of Judicial review the applicant filed the substantive notice of motion dated 4th January 2011 in which he sought the following orders:

- (i) That the Honourable court be pleased to grant an order of certiorari removing to the court the 1st respondent decision dated 30th July 2010 for the purposes of the same being quashed.
- (ii) That the Honourable court be pleased to grant an order of mandamus directed to the 1st respondent compelling him to demarcate the parcels no's 296 and 3420 Uringu II adjudication section on the ground and fix the boundary beacon thereto.
- (iii) That the costs of the motion be borne by the respondent and the interested party.

That application was vehemently opposed by all the eight (8) interested parties. Before that notice of motion was heard and determined, another person namely Eric Kinoti sought leave to be enjoined also as an interested party. On 3/4/2018, the firm of Kiautha Arithi, filed yet another application seeking to review the court orders issued on 4th March 2018 where this case was withdrawn as against the 6th interested party and sought to have the said Silas Muthee Mberia (6th interested party) reinstated.

When this Judicial Review came up for directions on 28/5/2018, the parties agreed to canvass the same by written submissions.

APPLICANT'S SUBMISSIONS

The applicant filed his submissions through the firm of Kiautha Arithi & co advocates on 11.7.2018 and submitted that the main issue for determination in this case is whether or not the 1st respondent had jurisdiction to entertain objections case Nos. 102, 103, 104, 1995, 1371, 148 and 362 and deliver his ruling on 30th July 2010.

The applicant also stated that the genesis of this case dates back to 1960 when land case no. 10/1960 was filed and the court awarded one M'Mutua M'Ikombo 2/3 of the land in dispute and the balance thereof (1/3) was awarded to Samuel Mukiri. He annexed a copy of the judgment to the submissions. The said decision was challenged in different forums but without success. The learned counsel submitted that the right of ownership to the disputed land had been litigated over and over again before different courts and they all came to one verdict which was the decision delivered in said case no. 10/1960.

It is further submitted that there was nothing left for litigation but only for the 1st respondent to implement the decision of land case no. 10/1960. The applicant further submitted that the 1st respondent who despite being aware of the previous decisions relating to the land in dispute entertained the objections over the ownership of the land which were already settled previously in the cases referred to in the supporting affidavit dated 4.12.2010 and especially the decision in High Court miscellaneous application No. 230 of 1993.

The applicant therefore submitted that the 1st respondent's actions were ultra vires as he had no jurisdiction to deal with or entertain objections founding or ownership of the land as these were already determined by another tribunal of higher authority than that of the office of the 1st respondent.

RESPONDENT'S SUBMISSIONS

The respondent have been studiously silent as they filed no submissions.

1 – 7TH INTERESTED PARTIES SUBMISSIONS

The 1st – 7th interested parties submitted that they were not parties nor were they involved in the alleged litigation in previous cases. They also submitted that all the alleged previous rulings and judgments were made before the area was declared an adjudication area and therefore expired after the expiry of 12 years as provided for under section 4(4). The 1-7 interested parties further submitted that the applicant has no locus standi to enforce orders on behalf of the entire family of M'Mutua M'Ikombo who is now deceased. It is submitted that the applicant is not a legal representative as he has no grant of letters of administration or any other legal capacity to act on behalf of that estate.

The interested parties also submitted that URINGU ADJUDICATION process was declared in the year 2008 and that the interested parties lodged their objections in respect of the parcels of land in their actual and physical possession which objections were allowed in accordance with the land consolidation and adjudication act cap 283 and 284 respectively.

It is further submitted that the applicant herein was not even a party in the objection proceedings and that he is a busy body and indeed a stranger. The 1 – 7 interested parties therefore submitted that the 1st respondent clearly followed the law and exercised his mandate as per the law and never acted ultra vires as alleged by the applicant.

8TH INTERESTED PARTY'S SUBMISSIONS

The 8th interested party instructed the firm of Carl Peters Mbaabu who filed his submissions on 13/8/2018. In his submissions the 8th interested party opposed the application and submitted that the order sought cannot issue as title deeds are already out. He submitted that

Uringu II Adjudication Section does not exist any longer after it was closed and title deeds issued in respect of the parcels of land in that adjudication section. The 8th interested party also submitted that demarcation of land and fixing of boundary beacons was done during the adjudication process which is long gone. He stated that the alleged parcel no's 2983 and 3420 do not exist on the ground. There is no extra land remaining where they can be demarcated on the ground. It is further submitted that the applicant has not availed any document e.g. a letter of ownership of the purported land parcel no. 2983 and 3420. He submitted that the applicant has failed to prove his alleged ownership of those two parcels of land.

The 8th interested party also raised the issue of lack of locus standi or capacity by the applicant as the two parcels of land belonged to M'Mutua M'Ikumbo who died before this matter was filed. The learned counsel also submitted that the applicant was not a party in the previous cases.

The 8th interested party further submitted that the applicant did not appeal under section 29 of the land adjudication act cap 284 and therefore did not exhaust all the remedies available to him in law.

Consequently the decision in the subject A/R objections was fully implemented and the title deeds issued. The 8th interested party also submitted that the 1st respondent had jurisdiction to hear the subject A/R objections since Uringu II adjudication section was at an advanced stage and that the land adjudication act, cap 284 applied to it. It is submitted that the 1st respondent had jurisdiction under section 26 of the land adjudication act cap 284 Laws of Kenya.

The 8th interested party cited the case of **Stanley Thiaine Mbui & Another vs Laws Adjudication officer Tigania West District & Another (2014) eKLR.**

In conclusions, the 8th interested party submitted that from 2010 when the subject A/R objection decision was made to date, is a period of about 9 years. The applicant went to slumber until this matter was overtaken by the event of issuance of title deeds to the interested parties.

ANALYSIS AND DECISION

I have considered the notice of motion dated 4th January 2011, the supporting affidavit and the replying affidavits in opposition thereto filed by the interested parties, their submissions and the applicable law. The issue for determination in this Judicial Review proceedings is a decision by the 1st respondent issued on 30th July 2010 where A/R objection no's 102, 103, 104, 195, 1371, 148 and 362 were all allowed. The 1st respondent further ordered/directed the demarcation officer to ensure that the plaintiffs land is demarcated both on the ground and plotted on the map. The 1st respondent further ordered that parcel no's 3420 and 2983 to be deleted on the records and on the map.

It is now well settled that Judicial Review proceedings only seek to challenge the procedural manner in which Judicial bodies such as the 1st respondent arrive at their decisions. It is never concerned with the merit of those decisions. That was succinctly put in the English case of **Chief constable of the North Wales police vs Evans (1982) 1 WLR 1155 where Lord Hailsham of St. Marylebone** held:-

“The purpose of Judicial Review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorized by law to decide for itself a conclusion which is correct in the eyes of the court”.

Again in **Meixner & Another vs Attorney General (2005) 2KLR 189**, the court held as follows:

“Judicial Review is concerned with the decision making process and not with the merits of the decision itself. Judicial Review deals with the legality of decision of bodies or persons whose decision are susceptible to Judicial Review. A decision can be upset through certiorari on a matter of law 18 on the case of it, it is made without jurisdiction or in consequence of an error of law. Prohibition restrains abuse or excess of power”.

The applicant's contention in the impugned decision issued by the 1st respondent on 30th July 2010 is that he acted ultra vires the powers conferred under the land Adjudication Act cap 284 Laws of Kenya. It's contention is that there were orders issued by court/s of competent jurisdiction being High court Misc Application No. 230 of 1993 (Nairobi) issued on 23.7.1994. In my respective view those rulings and judgment issued before the area was declared an adjudication area expired after the expiry of 12 years as provided for under section 4(4) of the limitation of actions act which provides as follows:

“4 (4) an action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered or (where the judgment or subsequent order directs any payment of money or the delivery of any property to be made at a certain date at recurring periods). The date of the default in making the payment or delivery in question and no arrears of interest in respect of a judgment debt may be recovered after the expiry of six years from the date on which the interest became due”.

The applicant had submitted to the jurisdiction of the District Land Adjudication & Settlement Officer Tigania West District (Uringu II Adjudication section) and presented this objection which was disallowed. The applicant did not exhaust his remedies by appealing to the minister before moving to this court. As I have already stated herein above, Judicial Review is only concerned with the decision making process and not the merits of the decision itself. For all the reasons I have given herein, the applicant's notice of motion dated 4th January 2011 fails and the same is hereby dismissed with costs.

It is so ordered.

DATED AND SIGNED THIS 18TH DAY OF OCTOBER 2018

E.C CHERONO

ELC JUDGE – KERUGOYA

DELIVERED IN OPEN COURT THIS 31ST OCTOBER 2018

LUCY N. MBUGUA

ELC JUDGE - MERU

In presence of:

C/A: Janet/Galgalo

C.P Mbaabu for 8th interested party also H/B for Mr. Mwanzia for 9th Interested party

Muthamia for 1st, 4th, 5th and 7th interested parties

Miss Gitonga H/B for Mr. Mutegi for Exparte applicant

9th, 1st, 5th, 7th, 4th, 6th interested parties