



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISC. CIVIL APPLICATION (JR) NO. 46 OF 2010

REPUBLIC..... APPLICANT

VERSUS

THE DISTRICT LAND ADJUDICATION & SETTLEMENT

OFFICER, IGEMBE DISTRICT.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

AND

DAVID KIBANCI M'ARAINI.....INTERESTED PARTY

JUDGMENT

1. Applicant filed grounds in support of the motion and also sworn an affidavit to that effect. His claim can be summarized as follows:-

1. That the objection No. 1570 proceeded illegally in view of the fact that there was a pending Maua SPM's Civil Suit No. 175 of 2009.
2. That the interested party herein had filed his claim against a deceased person without letters of administration.
3. The family of the applicant was not represented in the proceedings before the District Land Adjudication Settlement Officer.
4. That the notice of hearing was very short.

2. The interested party did respond to the Applicant's claim by filing a Replying Affidavit. The salient points raised by the interested party are that:-

1. The Objection to the adjudication register was lodged way back on 3rd August 2008 long before the Maua SPMCC No. 125/09 was filed. He also states that one of the prayers in the Maua case was to have an order of status quo pending the hearing and determination of the objection to the Adjudication Register.
2. That there is a Maua Succession Cause No. 54/11 where one James Katheru Gichuru has applied for a grant of letters of administration for the estate of his father, and that in the said case, the

present applicant had sworn an affidavit stating that he is a brother to James Katheru Gichuru.

3. That the family of deceased was actually represented by James Katheru and his mother Regina Inokobia Gichuru.

4. That all concerned parties were duly notified of the hearing of the objection case.

3. The Attorney General filed grounds of opposition on behalf of 1st and 2nd Respondent on 5th May 2015 where it is averred that the J. R. Motion is not meritorious.

4. Way back on 16th September, 2014, directions were given for the matter to be heard by way of written submissions. Both the ex-parte Applicant and Interested party did file their respective submissions. The Respondents did not.

Determination

5. I have weighed all the arguments raised herein as well as the submissions. The issue for determination are summarised as follows;

- i. whether the objection proceedings were illegal in light of the existence of the Maua SPM's case,
- ii. whether the objection proceedings were a nullity since no letters of administrates had been taken out in respect of estate of deceased,
- iii. whether the family of applicant was represented and whether the proceedings were unfair on ground that adequate notice had not been given.

Existence of the Maua Court case;

6. I find that indeed there exists a Maua case No. 175/09 whereby in the plaint, prayer C which is an alternative to prayer B reads:-

“an order that the Defendant do maintain a status quo pending the hearing and determination of the objection to the Adjudication register in respect of land parcel No. 1551 AKIRANJONDU “A” Adjudication Section lodged by the Plaintiff on 3rd September, 2008.”

Annexure DKM – IV in the Interested Party's Replying affidavit is a letter by the Interested party to the Igembe Land Adjudication Officer where the former was desiring to register his objection to the adjudication register parcel No. 1551.

7. Firstly it is clear that the interested party had lodged his objection long before filing the S.P.M Maua case. Secondly, it is quite apparent that in the Maua case, the interested party was seeking for other prayers too including a prayer for compensation.

8. The applicant has not clarified as to whether he raised the issue of the proceedings running in two different forums before the SPM's Court. Since in the S.P.M's case, the prayers sought were not just in respect of the objection proceedings before the District Land Adjudication Settlement Officer. then the Applicant ought to have raised his concerns before that court.

9. In the **Case of Republic and five others. Civil Appeal No. 1 of 2009 (NRB)**, the court of Appeal was dealing with a situation whereby the Land Adjudication Officer had used and referred to a decision already made in land case No. 21/1976. The Court of Appeal held that:-

“Section 10(1) of the land adjudication Act gave 1st Respondent jurisdiction in all claims under the Act relating to interest in land in the adjudication area with power to determine

any question for determination in connection with such claims..... Further, section 11(b) of the Act gives 1st Respondent powers to correct any error made in the adjudication register following complaints raised with regard to the same.”

10. It follows that the Respondent’s mandate to hear and determine the objection was properly anchored under the statutes despite the existence of the Maua case.

Letters of administration;

11. On the issue of lack of letters of administration in respect of the estate of Gichuru M’onaga (Applicant’s father), again I find that recourse is to be found under the land adjudication act Cap 281(1) Section 13.

“Every person who considers that he has an interest in land within an adjudication section shall make a claim to the recording officer..”

12. In HCCC No. 4 of 2011 *at Kisii Tobias Achola Osidi & 13 others Vs. Cypriances Otieno Ogalo & 6 others.....Okong’o J. held that:-*

“A claim for an interest in land made under the Land Adjudication Act, Cap. 284, Laws of Kenya , following the declaration of an area as an Adjudication Area or an Adjudication Section cannot be equated to a claim before this court. A claim under the Act pursuant to section 13 thereof can be made by “every person who considers that he has an interest in land within an adjudication section”. A claim under section 13 of the Act can be made by successors of a deceased person and not necessarily the deceased’s legal representatives.”

13. The proceedings in objection number 1570 are therefore not a nullity.

Representation in the objection proceedings.

14. On whether the family of Applicant was not represented in the objection proceedings, I find that the Applicant is not candid on this issue. He (Applicant) has stated that **“The purported representative of deceased i.e James Katheru is not a son to deceased hence the family of deceased was not Represented.”**

15. In the Maua S.P.M’s case No. 175 of 2009 paragraph 5 of the plaint, Applicant and James Katheru are mentioned as sons of Gichuru M’Ananga. The question is, what was the applicants defence in respect of that identification? Did he deny this relationship?. If Applicant was truthful, he could have at least indicated whether he denied the description of the parties in the Maua case

16. In the objection proceedings No. 1570, the person who appeared as representing the family of Gichuru M’Ananga is James Gatheru of ID No. [Particulars Withheld] and at the end of his testimony his full names are indicated as James Katheru Gichuru of ID No. [Particulars Withheld] . James Katheru had called as his witness one Regina Inokobia Gichuru who stated that she is wife of Gichuru M’nanga and to mother of James Katheru. I take it that Applicant has seen these proceedings and that is why he came to court. The question is while he is denying knowledge of James Gatheru, what about James Gatheru’s witness? Does the Applicant know Regina Inokobia as a wife of his father, (Applicant’s father). In short does he identify (Regina) her as his mother? From the response given by the Interested party and the documents on record, it is clear that the person who represented the family of the Applicant is James Katheru Gichuru who is a brother of the Applicant. I therefore find that the family of the Applicant was duly represented.

Was there notice given to the parties? I find that the applicant’s brother and his mother represented the family. There is no evidence of their complaint with regard to the hearing notice. I therefore find that there were no irregularities andor illegalities in the way the proceedings were held before the District Land Adjudication and Settlement Officer.

I conclude that the Judicial Review motion lacks merits and I dismiss the same with costs to the Respondents and the Interested party.

DELIVERED, DATED AND SIGNED AT MERU THIS 31ST DAY OF MAY, 2017

IN THE PRESENCE OF:-

C:A Janet

Miss Ungu for Interested Party

Interested Party Present

HON. L. N. MBUGUA

JUDGE