



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**MISCELLANEOUS CIVIL APPLICATION NO. 66 OF 2011**

**IN THE MATTER OF APPLICATION FOR ORDERS OF CERTIORARI**

**AND**

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT CAP 26**

**AND**

**IN THE MATTER OF LAND ADJUDICATION ACT CAP 284 OF THE LAWS OF KENYA AND**

**IN THE MATTER OF KIENGU/KANJOO ADJUDICATION SECTION P. NO. 471 OBJECTION  
CASE NO. 277 OF 2010.**

**REPUBLIC .....APPLICANT**

**VERSUS**

**MINISTRY OF LANDS AND SETTLEMENT .....1ST RESPONDENT**

**DISTRICT COMMISSIONER IGEMBE SOUTH DISTRICT.....2ND RESPONDENT**

**ATTORNEY GENERAL .....3RD RESPONDENT**

**HARRISON GITONGA MWIRARIA .....INTERESTED PARTY**

**JOHN MICHUBU LIMBERE.....EXPARTE APPLICANT**

**J U D G M E N T**

1. This is a Judicial Review matter where the Exparte Applicant has filed Notice of Motion seeking orders:-

1. That this Honourable Court be pleased to issue order of certiorari to call for the purpose of quashing the decision of the district Commissioners made on behalf of the Minister of Lands and Settlement in the Appeal to the Minister Case No. 227 of 2010 dated 9th March, 2010 in relation to land parcel No. 471 KIENGU/KANJOO and quash the same and other orders made therein against the rules of Natural Justice.

2. That costs of the motion be provided for.

2. The grounds in support of the Motion are to be found in the statement of facts dated 07:09:11 and in

the affidavit sworn on the same date. What the Exparte Applicant states is that the suit land No. 471 Kiengu /Kanjoo belong to his deceased father and that, that is where the applicant has always lived. He also says that he has extensively developed the land and he has planted Miraa thereon.

3. The Applicant avers that he filed A/R Objection Number 310 of 2009 which case he lost. He then proceeded to appeal to the Minister as per the law whereby a decision was given on 09:03:11.

4. Exparte Applicant claims that the decision was in breach of the Rules of Natural Justice, was unlawful and a nullity in that he was only summoned to testify on 16/02/11 when the case proceeded and that thereafter, the case never proceeded again.

5. The Interested Party filed a lengthy Replying Affidavit dated 20:01: 12 . He has captured minute details of the history of the dispute as well as the steps taken during the proceedings before the Minister.

6. In Summary, what the Interested Party states is that the Exparte Applicant was given an opportunity to be heard along with his witnesses.

7. The Respondent did not file a response to the main Substantive Notice of Motion.

8. Way back on 20:09:11, the Exparte Applicant had obtained leave to file the Substantive Judicial Review Motion which leave was to operate as a stay of the decision of the Minister.

9. On 06.02.14, directions were given by the Court for the suit to be canvassed by way of Written Submissions . All the parties have since filed their submissions including the Respondent.

10. **The Law applicable.**

The applicable law in respect of the proceedings before the Minister is quite elaborate. The said law is to be found in the land adjudication Act S. 29.

"(1) Any person who is aggrieved by the determination of an objection under section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by—

(a) delivering to the Minister an appeal in writing specifying the grounds of appeal; and

(b) sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.

(2) The Minister shall cause copies of the order to be sent to the Director of Land Adjudication and to the Chief Land Registrar.

(3) When the appeals have been determined, the Director of Land Adjudication shall—

(a) alter the duplicate adjudication register to conform with the determinations; and

(b) certify on the duplicate adjudication register that it has become final in all respects, and send details of the alterations and a copy of the certificate to the Chief Land Registrar, who shall alter the adjudication register accordingly.

(4) Notwithstanding the provisions of section 38(2) of the Interpretation and General Provisions Act (Cap. 2) or any other written law, the Minister may delegate, by notice in the *Gazette*, his powers to hear appeals and his duties and functions under this section to any public office by name, or to the person for the time being holding any public office specified in such notice, and the determination, order and acts of any such public officer shall be deemed for all purposes to be that

of the Minister.....".

It is clear from the record, that the matter had been dealt with at a lower level in A/R proceeding No. 310/09 where again the Exparte Applicant had lost. The Exparte Applicant however avers that he cultivates and has developed the suitland, and that is where his home is. It is trite law that Judicial proceedings do not deal with the merits of the decision but by the decision making process. see Municipal Council of Mombasa -Vs- Republic & Umoja Consultants Ltd Civil Appeal No. 185 of 2001. Where the Court of appeal held that:

***"Judicial Review is concerned with the decision making process, not the merits of the decision itself..... The Court should not act as a Court of appeal over the decider which would involve going into the merits of the decision itself such as whether there was or there was not sufficient evidence to support the decision....."***

11. To this end, this Court cannot deliberate on the issue as to whether Applicant is the rightful owner of the land or not.

## 12. Determination

I sum up the issue for determination as:

***" Whether the rules of Natural Justice were flouted in appeal No. 227 of 2010."***

The Exparte Applicant contends that he was not given a fair hearing in that his summons kept on being extended and he only testified on 16:02:11.

13. A perusal of the record of the proceedings before the Minister indicate that the appellant's witness was one Martin Kimathi. The Respondent's witnesses were 3 namely Cyprian Kanani, Eudicas Nyaga and Loyford Kiambi. The Court also called one witness namely Jerucha Mukomaua.

14. The proceedings commenced on 8:11:10 where the present Exparte -Applicant was the very first witness. His witness Martin Kimathi also testified. Both were cross examined. The Respondent and one of his witnesses are Cyprian Karani also testified on same day. They were cross examined by the Exparte Applicant.

15. The case was then adjourned to 24:11:10 when Jerusha Mukomaua testified. She is identified in the proceedings as the mother of the Exparte Applicant.

The case was then put off to 16:02:11 when the remaining witnesses of the Interested Party testified ( Eudicas Nyaga and Loyford Kiambi Mutua ). They were cross examined by the Exparte Applicant.

It is therefore not true that Exparte Applicant was only in Court on 16:02:11. The Applicant's averments that he was not accorded any opportunity to be heard is unfounded.

16. As regards when the verdict was delivered, I find that the same indicates it was 09:03:11. The document availed by the Applicant as JM-OJ ( summons) show that this date was extended now and then. It is however not unusual for the date of delivery of the Judgment to be postponed. What would be of concern is whether such postponement had any adverse effect upon any party.

17. The decision of the Minister under S. 29 of the Land Adjudication Act. is final. It therefore cannot be said that the postponement of the delivery of the ruling had adversely affected the Exparte Applicant.

18. All in all, I find that this is a case where by the Exparte Applicant has been enjoying the Exparte orders given on 21:09:11 for the last 5 years and still counting. I do find that the suit is unmerited. As such, I proceed to give the followings orders:-

(1) The Judicial Review Notice of Motion dated 10:10:11 is hereby dismissed.

(2) The orders of stay of the decision in appeal No. 227/10 before the Minister granted on 21:09:11 are hereby vacated.

(3) Exparte Applicant is condemned to pay costs of this suit.

**DELIVERED, DATED AND SIGNED AT MERU THIS 21st DAY OF SEPTEMBER, 2017 IN THE PRESENCE OF:**

CA Janet

Waigwa ; I am for Exparte Applicant

Kiongo for Respondent and h/b for Ntarangwi for Interested Party

**HON. L. N. MBUGUA**

**ELC JUDGE**

Kiongo: I pray for a certified copy of the Judgment.

**Order:** Certified copy of Judgment to be availed to the parties.

**HON. L. N. MBUGUA**

**ELC JUDGE**