



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW NO. 27 OF 2015

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW IN THE NATURE OF
CERTIORARI BY EXPARTE APPLICANTS**

AND

**IN THE MATTER OF THE OBJECTION NO. 1474 IN RESPECT OF LAND PARCEL NO. 4764,
4738 AND 4708 AKAIGA ADJUDICATION SECTION**

BETWEEN

ATANASIO NTOJIRA1ST EXPARTE APPLICANT

JASON NCHEENE.....2ND EXPARTE APPLICANT

VERSUS

THE DISTRICT LANDS ADJUDICATION OFFICER

TIGANIA EAST1ST RESPONDENT

THE HON. ATTORNEY GENERAL2ND RESPONDENT

PETER KIREMA M'RUKWARU.....INTERESTED PARTY

J U D G M E N T

The Notice of Motion dated 18th November, 2015 seeks orders that:-

1. This Honourable Court be pleased to issue orders of certiorari to call and quash the decision the 1st Respondent the District land Adjudication Officer Tigania East dated 18th June, 2015 in respect of A/R objection NO.1474 between the interested party and one Jackson Kagwika over land parcel Nos. 2131, 430, 4764, 4738 and 4708 Akaiga Adjudication Section.
2. That costs be provided for.

The grounds in support of the Motion are that the applicants were not parties to the proceedings in AR Objection 1474. They claim that they were denied the right to be heard.

The Interested party has opposed the Applicant's claim vide the Replying Affidavit of 08.12.16.

The Respondent has not filed any Response to this Judicial Review Motion.

Directions were given for the suit to be heard by way of Written Submissions.

CASE FOR THE APPLICANTS

The 1st applicant avers that he is the registered owner of parcel No. 4764 and 4738 in Akaiga Adjudication Section. He avers that the A/R objection No. 1474 was filed by the present Interested Party whereby the latter was awarded 8.60 acres. The Respondents decision was that the 1st application parcels of land No. 4738 and 4764 and any other parcel in the area was to be moved to the original site.

The 1st Ex-parte Applicant availed a document, annexure AN 1 to show that he is the owner of parcel No. 4764 and 4738.

As for 2nd Ex-parte Applicant he avers that he is the owner of parcel No, 4708 as per annexure JN1. He avers that the decision of Respondent also affected him.

It is averred by the Ex Parte Applicants that the A/R objection was between the present Interested Party and one Jason Kagwika. They further aver that, they were not aware that, there were A/R objection proceedings and that the dispute was purely touching on L.R 2131 and 430 Akaiga Adjudication Section.

The Ex-parte Applicants aver that they were not called upon to participate in the A/R Case No. 1474 and hence they were denied their Constitutional Right to be heard.

The Ex-parte Applicants urge the Court to quash the decision of 18.06.15 on the grounds that:-

- 1. The Exparte Applicants were condemned unheard contrary to the Law.**
- 2. The Ex parte Applicants land parcel Nos. 4764, 4738 AND 4708 Akaiga Adjudication Section were not in dispute in AR Objection No. 1474 before the 1st Respondent.**
- 3. The Ex-parte Applicants were not informed of the existence of A/R Objection No. 1474, where the affected parcels and persons were not part of the dispute.**

CASE FOR INTERESTED PARTY

For the Interested Party he contends that the Ex-Parte Applicants were aware of the Objection Proceedings No. 1474 and were also aware of the decision thereof. The Interested Party avers that the Motion was brought late in the day as the decision was made on 09:01:15 and not 18:06:15 and was fully implemented and so the Interested Party has been in exclusive possession of the land.

In support of his case, the Interested Party has cited these cases; Republic *Vs Mount Kenya University & Another and Council for Civil Service Unions vs. Minister for Civil Service [1985] A.C 374,*

The Interested Party concludes his case by stating that the rules of Natural Justice were not violated.

DETERMINATION

The issues for determination are two:-

- 1. Whether the Motion is properly before the Court.**
- 2. Whether the rules of Natural Justice were violated by the Respondent.**

Is the Motion properly before the Court?

Order 53 r (2) of Civil Procedure Rules provides the time lines for Judicial Review matters.

The Ex parte Applicant contends that the decision of which they desire it be quashed was delivered on 18.06.2015. The Interested Party on the other hand avers that the decision was delivered on 09.01.15 while making reference to page 1 of the document marked AN 5(the A/R proceedings).

I have looked at the objection proceedings. The commencement of the proceedings was on 09.01.15. The decision bears the date of 18.06.2015. This is a case where the Respondent even visited the Suitland. This could not have occurred all on one day. I am hence inclined to believe that the decision was made on 18:06:15.

The suit is hence properly before the Court as leave was obtained on 29: 10: 2015.

Were the Rules of Natural Justice violated?

I find that the objection No. 1474 was in respect of parcel No. 2131 and 430 between Peter Kirema M'Rukwaru, (the then objector) and Jason Kagwika Ncebere, the then Respondent. In the findings of the Land Adjudication Settlement Officer, she had stated that:-

“I perused the records and in that gathering found the following P/No. 530, 1949,4764 3537, 9417, 1440, 7396, 6697, 845, 4738 and half of 4644. These parcels numbers are subdivisions of 430, 2016 and 2131 which are the original numbers in the gathering, so since these numbers appear on the disputed lands they hence be included in the case”.

No explanation has been given as to how these parcels were to be included in the case at the stage of “**findings**”. The aforementioned finding also appear to be rather definite, even mentioning a half of parcel 4644 was to be affected. However, the final decision itself is rather vague and appears unrelated to the findings. The grammar worsens an already bad situation. The decision reads as follows:-

“Objection No. 1474 is allowed mentioned and the objector to be awarded 8.60 acres on the disputed lands with parcel No. 5530, 9417, 7396, 1440, 6691 are cancelled No. 3537 845, 4764, 4708, 4738 and 4644 and any other parcel No. within the gathering are moved to original sites, records to be implemented lands surveyor to implement on the ground with immediate effect”.

I have agonized to understand this decision. I have not succeeded.

One of the cardinal Principles of the Rules of Natural Justice is the Right to be heard; see article 50(1) of the Constitution which provides:-

“(1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a Court or, if appropriate, another independent and impartial tribunal or body”.

The decision of 18.6.15 was bound to adversely affect the owners of the mentioned parcels yet they were not given an opportunity to be heard. The decision itself is difficult to comprehend. The Respondents have records of the owners of those parcels. That is why they were able to avail such records to the Ex-parte Applicants.

I therefore find that the Rules of Natural Justice were violated.

CONCLUSION

1. The Motion succeeds. The Court hereby issues, orders of certiorari to call and quash the decision the 1st Respondent the District Land Adjudication Officer Tigania East dated 18th June, 2015 in respect of A/R objection No. 1474 between the Interested Party and one

JACKSON KAGWIKA over all the affected Land Parcel Numbers including parcels 2131, 430, 4764, 4738 and 4708 in Akaiga Adjudication Section.

2. The dispute is remitted back to the Land Adjudication and Settlement Officer for hearing and determination, where by all the affected parties particularly the Ex parte Applicants are to be given an opportunity to be heard.

3. Each party to bear their own costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 23RD NOVEMBER, 2017 IN THE PRESENCE OF:-

CA: Janet/ Haway

Kaimenyi H/B for Ngunjiri for Interested party

Mutungu H/B for Ayub Anampiu for Ex Parte Applicant.

Hon. L. N. MBUGUA

ELC JUDGE