



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**JUDICIAL REVIEW NO. E002 OF 2021**

**IN THE MATTER OF**

**AN APPLICATION FOR AN ORDER OF CERTIORARI TO QUASH THE DECISION OF  
THE DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER – MERU CENTRAL  
DATED 22<sup>ND</sup> JULY 2020 AND AN ORDER OF MANDAMUS COMPELLING HIM TO  
REHEAR OBJECTION NO. 438, RUIRI/RWARERA ADJUDICATION SECTION**

**AND**

**IN THE MATTER OF**

**LAND PARCEL NO. RUIRI/RWARERA/3273**

**AND**

**IN THE MATTER OF**

**LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA**

**AND**

**IN THE MATTER OF**

**SECTIONS 8 & 9 OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA**

**REPUBLIC..... APPLICANT**

**VERSUS**

**THE ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT**

**THE ADJUDICATION AND SETTLEMENT**

**OFFICER MERU CENTRAL..... 2<sup>ND</sup> RESPONDENT**

**AND**

**CELINA NKIROTE .....1<sup>ST</sup> INTERESTED PARTY**

**GEDION MUGAMBI MWORIA .....2<sup>ND</sup> INTERESTED PARTY**

**MERCY KANYIRI .....3<sup>RD</sup> INTERESTED PARTY**

MICHAEL MWIRIGI (As the legal representative of the Estate of

M'Maitaima M'Muthamia (Deceased) ..... EX-PARTE

### JUDGMENT

1. The ex-parte applicant by a notice of motion dated 1.2.2021 seeks for:-

**a) Certiorari to bring to this court for purposes of quashing the decision and or award delivered on 22.7.2020 by the 1<sup>st</sup> respondent in objection No. 438 Ruiiri/Rwarea Adjudication.**

**b) Mandamus compelling the 1<sup>st</sup> respondent to rehear objection No. 438 – Ruiiri Rwarea Adjudication Section with the participation of the exparte applicant.**

2. The application is supported by the statutory statement of facts sworn on the even date and annexures thereto marked **MMN “1” – MMM “5”**.

3. The brief facts are that the deceased now represented by the exparte applicant bought 3 acres excised from **L.R No. Ruiiri/Rwarera 890** in 1991 which was recorded in his name as **L.R No. 3273 Ruiiri Rwarera Adjudication**. He passed on 30.7.2006 before the adjudication exercise was concluded. Unknown to the deceased family, on 1.7.2020 the 1<sup>st</sup> interested party filed objection **No. 438** claiming ownership over the land which was heard and determined on 22.7.2020 in his favour.

4. The exparte applicant avers the said process was contrary to his rights to fair hearing, access to justice and sanctity to property.

5. In support of the facts, the exparte applicant attached a limited grant of letters of administration ad litem issued on 13.1.2021, a sale agreement, confirmation letter from the 1<sup>st</sup> respondent, copy of death certificate and objection proceedings dated 22.7.2020.

6. The 1<sup>st</sup> and 2<sup>nd</sup> respondents by grounds of opposition dated 2.3.2021 and written submissions dated 15.4.2021 opposed the notice of motion though it appears the same were largely directed at the issue of the grant of leave to act as stay.

7. As regards the 1<sup>st</sup> and 2<sup>nd</sup> interested parties they oppose the application through a replying affidavits sworn on 22.2.2021 and **20<sup>th</sup> September 2021** by **Gedion Mugambi Mworira** and **Mercy Kanyiri** respectively.

8. The 1<sup>st</sup> interested party avers he is the owner of **L.R No. Ruiiri/Rwarera/2962** measuring approximately 3 acres which he bought in 1990 from one John Marangu. He insists though affected by the outcome of the objection proceedings, the 1<sup>st</sup> respondent did not involve him hence was also condemned unheard contrary to the provisions of **Cap 283, 284** and the **Constitution of Kenya** hence supported the motion herein. He attached annexure marked GMM 01 a confirmation letter from the 1<sup>st</sup> respondent dated 29.6.2021 indicating that **Parcel No. 2962 borders No. 3804**.

9. The 2<sup>nd</sup> interested party Mercy Kanyiri avers she owns **L.R No. Ruiiri Rwarera/3804** having bought it in 1992 from one Nathan Kathurima who had acquired the same from John Mathangu. She claimed the objection proceedings adversely affected her property yet she was condemned unheard and without notice. She produced annexure marked **MM “1”** a letter from the 1<sup>st</sup> respondent dated 3.2.2021 confirming ownership which was a subdivision of **Parcel No. 2962**.

10. Celina Nkirote Moses opposed the notice of motion by a replying affidavit sworn on 23.2.2021. She states she is the owner of **L.R No. Ruiiri/Rwarera/3273 and 890** which arose out of the objection No's **438 and 404** in line with **Cap 284 Laws of Kenya**.

11. In her view, summons to attend the objections were duly served through the area chief Kariene for **18.3.2020, 25.5.2020, 27.5.2020, 4.6.2020, 18.6.2020 and 1.7.2020** but in vain.

12. Secondly, Celina Moses avers 1<sup>st</sup> respondent severally summoned the exparte applicant who failed or neglected to attend the proceedings.

13. Thirdly, she avers the exparte applicant has not demonstrated if he sought for the re-opening of the objection through the 1<sup>st</sup> respondent or appealed before the Minister within the 60 days as stipulated under the law.

14. Fourthly, Celina Moses stated she had been in occupation of the land for over 40 years with extensive developments thereon from the borehole and records from the objection proceedings do not indicate the exparte applicant was ever an owner of any land in the area as alleged or at all. She states there was a possibility as indicated by the 1<sup>st</sup> respondent that several parcels had been imported from another block to her detriments among them that of the exparte applicant; out of which the original map have been tampered with and in a fraudulent manner.

15. Fifth the interested party stated the decision should not be quashed since the exparte applicant had failed to adhere to laid down procedures for appeal under the enabling law.

16. Lastly, the interested party averred she lives on the land with her family, had no intention to dispose of her land or displace the exparte

applicant and that the decision had ruled that those lands be returned to the original positions in sheet **No. 108/1/22/2** and land on sheet **No. 108/1/17/13**.

17. The interested party buttresses her opposition through written submissions dated 10.11.2021. It is submitted the application is an abuse of the court process for non-compliance with internal dispute mechanism under **Cap 284**, was duly served with summons to appear but neglected to attend; the proceedings were in line with **Sections 12 and 13** of the Land Adjudication Act.

18. As regards the 2<sup>nd</sup> and 3<sup>rd</sup> interested parties, by submissions dated 15.11.2021 they submit the notice of motion be allowed since the 1<sup>st</sup> respondent acted illegally, unreasonably and contrary to the rules of natural justice.

19. They relied on *Republic –vs- National Land Commission & Another Exparte Krystalline Salt Ltd [2015] eKLR, Municipal Council of Mombasa –vs- Republic & Umoja Consultants Ltd [2003] eKLR, Onyango Oloo –vs- Attorney General [1989] EA 456.*

20. Having gone through the pleadings, submissions for and against the motion the issues for determination are:-

**a) If the decision or award made by the 1<sup>st</sup> respondent was made in flagrant disregard of the laws on fair hearing.**

**b) If the 1<sup>st</sup> respondent had jurisdiction to hear the dispute.**

**c) If the 2<sup>nd</sup> and 3<sup>rd</sup> interested parties are properly in order to support the notice of motion.**

21. The exparte applicant's claim is that his deceased father was already dead at the time the objection proceedings were heard and determined. The 1<sup>st</sup> interested party Celina Nkirote claims there was proper service by the 1<sup>st</sup> respondent. Unfortunately the respondents have not denied the averment's by the exparte applicants as regards exercise of his statutory and constitutional obligations. The 1<sup>st</sup> interested party cannot purport to speak on behalf of 1<sup>st</sup> respondent and answer for their statutory mandates.

22. **Article 47 of Constitution** grants every person a right to an administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. In furtherance of this right, the **Fair Administrative Actions Act 2015** defines the power, functions and duties to be exercised by the 1<sup>st</sup> respondent while undertaking an administrative action under the **Land Adjudication Act**.

23. **Section 4** requires any person likely to be adversely affected by the decision to be given prior and adequate notice, an opportunity to be heard, and attend the proceedings and if aggrieved of the decision to challenge such a decision under **Section 55** of the **Commission on Administrative Justice Act No. 23 of 2011** or any other written law.

24. **Section 5** provides an aggrieved party may lodge a judicial review proceedings against a decision made outside the law under the original jurisdiction of the High court under **Article 23 (3, 4) of the Constitution**.

25. Under **Section 9** of the **Fair Administrative Action Act** the High Court may under exceptional circumstances and on an application by the applicant exempt such a person the obligations to exhaust any remedy if the court considers such exemption to be in the interest of justice.

26. The exparte applicant in line with **Section 9 (1) of Fair Administrative Actions Act** made the application within the reasonable period during which the court granted leave and proceeded to hear the parties on whether the leave to act as stay or not.

27. The court also made a determination on the preliminary objection as to jurisdiction of the court to entertain the proceedings. Consequently, the court finds no merit on the ground that the applicant ought to have exhausted the procedures set out under **Sections 26 and 29** of the **Land Adjudication Act** and **Land Consolidation Act** and more importantly for reasons as shall be clear in this judgment.

28. There is no dispute from either the respondents or the interested parties that the exparte applicant's late father was dead by 22.7.2020. As at the time the appeal was heard the deceased was not duly represented. So the question is whether failure to enjoin the legal or personal representative of the deceased was fatal or not.

29. The issue of the representation of deceased parties in proceedings under the Land Adjudication Act was considered by the court in *Dominic Musei Ikombo –vs- Kyule Makau [2019] eKLR*. The court held **Section 13** of the **Land Adjudication Act** refers to a guardian or representative according to African customary law and not a legal representative as known under **Section 3** of the **Law of Succession Act Cap 160 Laws of Kenya** hence there was no necessity to possess letters of administration for one to have locus standi before the adjudication committee.

30. Looking at the instant case, there is no indication on whether the head of the deceased family or clan was served with summons. The area chief Kariene is alleged to have served the summons. There is no evidence to show such service even occurred. The onus was on the 1<sup>st</sup> respondent to produce any such served summons.

31. As indicated above, the onus was on the 1<sup>st</sup> respondent to confirm compliance and adherence with the law. See *Judicial Service Commission -vs- Mbalu Mutava & Another [2015] eKLR*.

32. Secondly the 1<sup>st</sup> respondent went on to determine the objection whose effect was to determine and or adversely affect other parcels of numbers whose recorded owners were not given an opportunity to be heard, present and or participate in the proceedings. See *Republic –vs-*

**Registrar of Companies Exparte Githungo [2001] KLR 299, Republic –vs- Kenya Power & Lighting Co. Ltd. & Another [2013] eKLR.**

33. Further, the 1<sup>st</sup> respondent made findings touching on documents which were not disclosed to the parties and or if disclosed would have required the full participation of the 2<sup>nd</sup> and 3<sup>rd</sup> interested parties. See **D.K. Njagi Marete –vs- Land Adjudication Officer [2013] eKLR.**

34. Thirdly, the 1<sup>st</sup> respondent determined matters regarding adverse possession which under **Sections 70 & 38 of the Limitation of Actions Act** as read together with **Order 37 of the Civil Procedure Rules** do not fall under his jurisdiction under **Section 26 of the Land Adjudication Act**. See **Choitram –vs- Mystery Model Hair Saloon, [1972] EA 525.**

35. Fourthly, the 1<sup>st</sup> respondent appears to have unilaterally and without notice to all the disputants visited the **locus in quo** and made observations which he used to make the final determination contrary to the law.

36. In all these circumstances, the 1<sup>st</sup> respondent went on a frolic of his own and rode roughshod. See **Kenya Human Rights Commission & Another –vs- Non Governmental Organization Coordination Board and Another [2018] eKLR, Law Society Kenya –vs- Rights and Democracy & 13 Others [2013] eKLR.**

37. The 1<sup>st</sup> respondent's decision also mentions parcels of land in which title deeds had been issued. The 1<sup>st</sup> respondent is governed by the **Land Adjudication Act** and not the Land Registration Act under which title deeds are issued. Even though aware of the same, the 1<sup>st</sup> respondent went on to make findings and decisions beyond its mandate. In **Josphat Nyaga Makembo & 2 Others –vs- Attorney General & 4 Others [2016] eKLR, Olao J.** quashed a decision in similar circumstances since cancellation of title deed is the preserve of courts.

38. The court has held in **International Centre for Policy and Conflict & Others –vs- Attorney General & Others [2013] eKLR** has step in an clip the wings of the 1<sup>st</sup> respondent so as to nurture this tumour of impunity.

39. The 1<sup>st</sup> respondent seems to have run amok without minding whether his actions are backed by law or not. See **Republic –vs- Non Governmental Organizations Coordination Board Exparte Evans Kidero Foundation [2017] eKLR.**

40. In the premises, I have no hesitation in granting the orders sought in the notice of motion in terms of prayers 1 & 2.

41. Costs to the exparte applicant.

Orders Accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 19<sup>TH</sup> DAY OF JANUARY, 2022**

**In presence of:**

Kounyangi holding brief for Kaumbi for exparte applicant

Kieti for respondents

Murithi for 1<sup>st</sup> interested party

**HON. C.K. NZILI**

**ELC JUDGE**