



REPUBLIC OF KENYA
IN HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JR CASE NO. 37 OF 1984

REPUBLIC.....APPLICANT

VERSUS

DIRECTOR OF LAND ADJUDICATION.....1ST RESPONDENT

MURATHA MICHEU2ND RESPONDENT

EX-PARTE STANELY MBIUKI

JUDGEMENT

1. The notice of motion dated 7th March, 1984 as amended on 21st July, 2005 is the application for consideration by this Court. Through the said application, the ex-parte Applicant Stanley Mbiuki first prays for an order of mandamus compelling the 1st Respondent, the Director of Land Adjudication, not to delete his name from the Register of Existing Rights as the owner of Land Reference No. 1076 Muiru. Further, that if his name has been deleted from the said Register, the 1st Respondent be directed to restore him to the Register of Existing Rights. Secondly, the Applicant seeks that the new numbers (KARINGANI/MUIRU/1201 to 1206 and KARINGANI/MUIRU/916) given to the said land parcel No. 1076 be registered in the names to be supplied to the 1st Respondent by the Applicant. Thirdly, the Applicant asks for an order of certiorari to remove to this Court and quash the decision of the 1st Respondent contained in the letter dated 11th August, 1983 cancelling the Applicant's name from the Register of Existing Rights and replacing the same with that of the 2nd Respondent, Muratha Micheu.
2. It is important for purposes of record to note at this stage that Muratha Micheu is now deceased and Japeth Muyandi Kibanga and Paul Gitonga Mugumo, the legal representatives of his estate have replaced him in this matter. The 2nd Respondent will henceforth be referred to as the deceased.
3. This matter was filed in early 1984. Although the dispute giving rise to these proceedings goes way back to the 1960s, the cause of action started in 1983 when the Applicant received a letter dated 22nd July, 1983 asking him to appear on 3rd August, 1983 before the Land Adjudication Officer, Meru. According to the Applicant, when he turned up on the appointed date he was informed that his parcels of land numbers KARINGANI/MUIRU/1201, 1202, 1203, 1206 and 916 had been given new numbers namely KARINGANI/MUIRU/1565, 1566, 1567 and 1568 and registered in the names of other persons.
4. The Applicant immediately wrote a letter to the 1st Respondent complaining of this new development. On 11th August, 1983 the 1st Respondent replied to the Applicant as follows:

“LAND CASE COMPLAINT BY MR. MURATHA MICHEU

MUIRU ADJUDICATION SECTION

I refer to your letter dated 9-8-1983 on the above matter.

The true position is as follows:

- (a) Muiru was established an adjudication section under the provisions of the Land Consolidation Act, Chapter 283, on 1-4-64. Its Record of Existing Rights was published complete for inspection and objections on 7-6-68 under sections 16 and 17 of that Act, and was on 18-8-72 by a public notice deemed to be a true and complete record of all the existing rights and interests in the adjudication section under section 20 of the Act. The adjudication register for the section was published complete for inspection and objections after the process of demarcation and consolidation, on 7-8-74 under sections 25 and 26 of the Act and has not to date been declared to be final under section 27.**
- (b) During the period of fragment gathering in MUIRU, Mr. Muratha Micheu filed a land adjudication committee case (No. 31/65) against you and the committee awarded to him the land in dispute.**
- (c) You later lodged an objection to the Record of Existing Rights (Objection No. 52) appealing against the committee decision, and on 20-9-68 the Executive Officer of the committee allowed you to file an arbitration board case No. 58/68. The board heard the case on 6-5-1970 and gave judgment against you on 8-5-70 in favour of Muratha Micheu, thereby confirming the committee decision in case No.31/65. On 25-6-70 the Land Adjudication Officer perused the proceedings and judgments of both cases and confirmed the judgments. Now, under section 19 of the Land Consolidation Act aforesaid such confirmation or determination of the Land Adjudication Officer is final and is not subject to appeal.**
- d. You were however not satisfied with the confirmation and you therefore complained to this office, as a result of which I directed the Land Adjudication Officer to investigate the matter further. After the completion of those investigations it was recommended that the records should be amended in your favour – but this was not in accordance with the provisions of the Land Consolidation Act. It was purely on humanitarian grounds.**

My letter LA.5/1/17 Vol. XIX/205 dated 14-6-83 merely directed the Senior Land Adjudication Officer Meru to comply with the law, as stated in (c) above, by re-instating Muratha Micheu as the owner of the land in accordance with the 1970 confirmation of the Land Adjudication Officer.”

This is the letter the Applicant seeks to quash.

5. The Applicant filed a chamber summons application for leave, an affidavit and a statutory statement all dated 13th February, 1984. The Court granted leave to the Applicant to commence these proceedings on 16th February, 1984. Along the way the Applicant did file other affidavits.
6. The Applicant’s case is that he lives with his family and relatives on land parcel numbers KARINGANI/MUIRU/1201 to 1206 and KARINGANI/MUIRU/916. It is his case that after the Arbitration Board confirmed the decision of the Adjudication Committee awarding the land to the deceased, he appealed to the Director of Land Adjudication (the 1st Respondent) who directed the Land Adjudication Officer, Meru to carry out fresh inquires which resulted in his being given the land in question. The Applicant stated that the decision overturning the award of the land to the deceased was communicated to him verbally by one Mr. Mwirichia in 1972. He also averred that he was informed that the decision was communicated to the deceased. He however did not disclose the source of this information. It is the Applicant’s case that the Land Adjudication

- Officer had powers under the Land Consolidation Act to overrule the earlier decisions.
7. The 1st Respondent opposed the application through a replying affidavit sworn on 11th October, 1984 by the Deputy Director of Land Adjudication, Mr. Fredrick Rudolf Sandech Onyango. The Deputy Director of Land Adjudication averred that he was the custodian of the official records and was familiar with the dispute over KARINGANI/MUIRU/1201-1206 and KARINGANI/MUIRU/916 between the Applicant and the deceased. He deposed that during the process of gathering fragments of land before demarcation, the deceased filed a Land Adjudication Committee Case No. 31 of 1965 against the Applicant and the Committee awarded the land to the deceased. The Applicant then raised an objection in respect to the decision of the Committee and the case was referred to the Arbitration Board as case No. 58 of 1968. After the Arbitration Board heard the dispute, it also decided the matter in favour of the deceased.
 8. According to the 1st Respondent's replying affidavit, the Arbitration Board's decision was confirmed by the Land Adjudication Officer on 25th June, 1970 in accordance with Section 18(3) of the Land Consolidation Act. The Applicant then complained to the 1st Respondent and as a result of the said complaint, investigations were carried out afresh by the Land Adjudication Officer who was in the adjudication area at that time. The Land Adjudication Officer found in favour of the Applicant and without the express authority of the 1st Respondent directed the demarcation officer to alter the Record of Existing Rights to show that the Applicant was the owner of the land in question.
 9. According to the Deputy Director of Land Adjudication, in September, 1982 the deceased upon discovering the alteration of the Record of Existing Rights lodged a complaint with the Provincial Land Adjudication Officer, Embu. As a result of the complaint, fresh investigations were carried out and a report made to the 1st Respondent. It was then that the 1st Respondent instructed the Provincial Land Adjudication Officer to implement the decision of the Land Adjudication Committee and the Arbitration Board as confirmed by the Land Adjudication Officer on 25th June, 1970 and this led to another alteration in the Record of Existing Rights.
 10. It is the 1st Respondent's case that the Adjudication Register which shows the deceased as the owner of the land in dispute was on 8th December, 1983 declared to be final and handed over to the Land Registrar, Meru for registration within the provision of the Registered Land Act, Cap 300.
 11. The deceased did not file any response prior to his demise. The legal representatives of his estate, however, filed a replying affidavit sworn by Japhet Muyandi Kibanga on 24th January, 2006. Through the said affidavit, Japhet Muyandi Kibanga associated himself with the replying affidavit of the 1st Respondent. He averred that at the time of filing this matter in 1984, the Applicant had not carried out any developments on the suit land as the same had been awarded to the deceased by the Land Adjudication Committee and the Land Arbitration Board and this had been duly confirmed by the Land Adjudication Officer on 25th June, 1970. He averred that the Applicant only commenced development of the suit land by erecting permanent structures on some parts thereof after the commencement and during the pendency of these proceedings. It is his case that the Applicant was taking undue advantage of the order of stay to perpetrate and enhance illegal acts.
 12. The legal representative of the estate of the deceased deposed that the Applicant and his relatives had filed other cases in Meru High Court namely **HCCC No. 161 of 2002 (O.S) Stanley Mbiuki v Julius Kiura Ringera** and **HCCC No. 162 of 2002 (O.S) Justin Njoka v M'Mkanga Muratha** touching on some of the parcels of land which are the subject matter of these proceedings. It is therefore his case that these proceedings are an abuse of the court process, have no merit and the orders sought should not issue.
 13. Looking at the papers filed in Court and the arguments of the parties, the question that arises is whether the 1st Respondent's decision contained in the letter dated 11th August, 1984 was illegal, unreasonable and/or breached the rules of natural justice. The deceased's legal representatives have also submitted that leave to apply for an order of certiorari ought not to have been granted in the first instance.
 14. The Applicant and the deceased's legal representatives have submitted at length why the Court should find in their favour as regards the ownership of the land in question. In my view, their

submissions have been directed at the wrong forum. Judicial review is not an appeal from the decision of a public body or tribunal. Judicial review does not concern itself with the merits of the decision but looks at the process leading to the making of the decision. This was clearly stated by the Court of Appeal in **Municipal Council of Mombasa v Republic & Umoja Consultants Limited** [2002] eKLR in the following words:

“The court would only be concerned with the process leading to the making of the decision. How was the decision arrived at? Did those who made the decision have the power, i.e. the jurisdiction to make it? Were the persons affected by the decision heard before it was made? In making the decision, did the decision - maker take into account relevant matters or did he take into account irrelevant matters? These are the kind of questions a court hearing a matter by way of judicial review is concerned with, and such court is not entitled to act as a court of appeal over the decider; acting as an appeal court over the decider 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 – and that, as we have said, is not the province of judicial review.”

15. Judicial review deals with the issues of illegality, irrationality and procedural impropriety. Stating the boundaries of judicial review in the case of **Council of Civil Service Unions v Minister for the Civil Service** [1984] 3 ALL ER 935 Lord Diplock opined that:

“Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call "illegality," the second "irrationality" and the third "procedural impropriety." That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality" which is recognised in the administrative law of several of our fellow members of the European Economic Community ; but to dispose of the instant case the three already well-established heads that I have mentioned will suffice.

By "illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

By "irrationality" I mean what can by now be succinctly referred to as "Wednesbury unreasonableness" (Associated Provincial Picture Houses Ltd, v. Wednesbury Corporation [1948] 1 K.B. 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system.....

I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.”

The boundaries of judicial review are therefore well demarcated and any party who approaches the

Court by way of judicial review needs to familiarise himself or herself with the limitations of judicial review remedies and adhere to the rules.

16. The deceased's counsel submitted that leave to apply for an order of certiorari ought not to have been granted to the Applicant in the first instance. The deceased's case is premised on Order LIII Rule 2 of the Civil Procedure Rules (now Order 53 Rule 2 of the Civil Procedure Rules, 2010) which provided that:

“Leave shall not be granted to apply for an order of certiorari to remove any judgement, order, decree, conviction or other proceedings for the purpose of its being quashed, unless the application for leave is made not later than after the date of the proceedings or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”

17. It is argued on behalf of the estate of the deceased that the said rule was in force at the time these proceedings were filed in 1984. The Applicant did not respond to this argument. According to the Court record, the application for leave was filed on 13th February, 1984 and leave was granted on 16th February, 1984. The letter containing the impugned decision is dated 11th August, 1983. As per Section 57(a) of the Interpretation and General Provisions Act, Cap 2, time would have started running from 12th August, 1983. It is not known when the decision was delivered and assuming the letter was posted then the Applicant would have received it a few days thereafter. It would therefore be punitive and unfair to conclude that the Applicant's case breached the six months rule. The deceased's attempt to have the Applicant's case dismissed on this ground is therefore rejected.

18. In my view, the core issue in this matter is whether the 1st Respondent's decision contained in the letter dated 11th August, 1983 was illegal. The said letter, which has already been reproduced in this judgement, is self-explanatory. The summary of it is that the entry of the name of the Applicant in the Record of Existing Rights was erroneous and without any legal backing. It is important to note at this stage that the activities that gave rise to this dispute are said to have proceeded under the Land Consolidation Act, Cap 283 (LCA) and not the Land Adjudication Act, Cap 284 (LAA).

19. The preamble to the LCA states:

“An Act of Parliament to provide for the ascertainment of rights and interests in, and for the consolidation of, land in the special areas; for the registration of title to, and of transactions and devolutions affecting, such land and other land in the special areas; and for purposes connected therewith and incidental thereto.”

20. The parties are agreed that the committee of the adjudication section established under Section 9 of the LCA dealt with the dispute and found in favour of the deceased. The Applicant being aggrieved took the matter to the Arbitration Board as established by Section 10 of the LCA. The Arbitration Board also made a finding in favour of the deceased. The Applicant was again not satisfied and referred the matter to the 1st Respondent who ordered for fresh investigations. Upon the fresh investigations, it was decided that the land should be given to the Applicant. The Applicant's name was put in the Record of Existing Rights in 1971. The matter then went quiet until 1982 when the deceased complained to the 1st Respondent leading to the issuance of the letter dated 11th August, 1983 which is the subject of these proceedings.

21. The question is whether the 1st Respondent's decision in 1971 to order fresh investigations was backed by the law. According to sections 11 and 12 of the LCA the Adjudication Committee shall adjudicate upon and determine in accordance with African customary law the claim of any individual person to any right or interest in any land within the adjudication section. Where the Adjudication Committee is unable to reach a decision, it shall refer the matter to the Arbitration Board which shall decide the matter and inform the Adjudication Committee of its decision.

22. Section 15 of the LCA provides that there shall be prepared in respect of each adjudication section and in accordance with the findings of the Adjudication Committee or Arbitration Board a Record of Existing Rights. After completion of the preparation of the Record of Existing Rights, notice is given to the public to inspect the Record. Section 17 of the LCA provides for objection to the Record of Existing Rights by any person who considers the Record to be inaccurate or incomplete.
23. Once an objection is lodged, the executive officer shall proceed in accordance with Section 18 of the LCA as follows:

“Procedure with regard to objections

1. **The executive officer, with whom an objection is lodged in accordance with the provisions of section 17 of this Act, shall either—**
 - a. **refer the objection to the Committee, if it appears to him that the inaccuracy or incompleteness alleged is a consequence of any decision of the Committee; or**
 - b. **submit the objection to the Adjudication Officer, if it appears to the executive officer that the inaccuracy or incompleteness alleged is a consequence of any decision of an Arbitration Board.**
2. **Any objection referred to a Committee under subsection (1) of this section shall be considered by the Committee and the Committee shall make a finding thereon; every such finding shall be submitted to the Adjudication Officer.**
3. **The Adjudication Officer, to whom an objection or the finding of a Committee is submitted under subsection (1) or subsection (2) of this section (as the case may be) shall, in the case of an objection so submitted to him, consider the matter with the Arbitration Board and, after making such further inquiries as he may think fit, determine the matter; and shall, in the case of a finding so submitted to him, either—**
 - a. **confirm the finding of the Committee; or**
 - b. **consider the matter with the Arbitration Board and, after making such further inquiries as he may think fit, determine the matter.”**

24. Section 19 provides that the decision of the Adjudication Officer shall be final. It reads:

“Decision of Adjudication Officer to be final

Any confirmation or determination of an Adjudication Officer made under section 18 of this Act shall be final and shall be notified in writing, signed by the Adjudication Officer, to the executive officer of the Committee concerned, who shall make such alteration, if any, as may be required in the Record of Existing Rights to give effect to such confirmation or determination.”

25. Section 20 then proceeds to provide for the finality of the Record of Existing Rights as follows:

“Record of Existing Rights to be final

After the expiry of sixty days from the date mentioned in section 17, or on the date upon which all alterations to the Record of Existing Rights have been made in accordance with section 19, of this Act, whichever is the later, the Record shall be deemed to be a true and complete record of all existing rights and interests in the adjudication section to which the Record relates:

Provided that no inaccuracy in, or omission of, any particular shall in any way affect the validity of any lease or license granted under Part VI of the Trust Land Act ([Cap. 288](#)).”

26. After the preparation of the Record of Existing Rights, demarcation commences followed by the

preparation of an Adjudication Register. There is room for objection to the Adjudication Register but it appears that none of the parties in the proceedings before this Court lodged an objection to the Adjudication Register.

27. The LCA does not provide for appeal to the 1st Respondent. Unlike the LAA it does not provide for an appeal to the Minister. The 1st Respondent's decision to order for a fresh inquiry was therefore not backed by the law. The Adjudication Officer had made a confirmation in 1970 and that confirmation was final as per Section 19 of the LCA. The alleged overturning of the earlier decision of the Adjudication Officer by one Mr. Mwirichia was therefore contrary to the law. The 1st Respondent admits in his letter dated 11th August, 1983 that his decision to order for fresh investigations was unlawful but sugar-coats it by claiming that the Applicant's name was restored to the Adjudication Register on "humanitarian grounds."
28. The Applicant cannot be allowed to claim a right to land based on an illegal decision. It is also clear that the deceased was never involved in the 1971 decision and this was a clear breach of the rules of natural justice. The letter dated 11th August, 1983 was only rectifying a mistake and the same was not illegal or unreasonable. The Applicant was not entitled to a hearing in the circumstances. I therefore find that no grounds have been advanced by the Applicant in support of his prayer for the grant of judicial review orders.
29. The Applicant's application lacks merit and the same is dismissed. Considering that the Applicant's predicament arose from a mistake on the part of the 1st Respondent, it is not fair to order him to meet the costs of these proceedings. I therefore direct each party to meet own costs of this matter.

Dated, signed and delivered at Nairobi this 19th day of March , 2015

W. KORIR,

JUDGE OF THE HIGH COURT