



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**  
**JUDICIAL REVIEW APPLICATION NO. 24 OF 2014**  
**IN THE MATTER OF APPLICATION FOR ORDERS OF JUDICIAL REVIEW BY**  
**JECINTA WANJIRU MUNIU**  
**AND**  
**IN THE MATTER OF THE IRRIGATION ACT CAP 347 LAWS OF KENYA**  
**AND**  
**IN THE MATTER OF RICE HOLDING NUMBER 209 UNIT 13D MWEA TEBERE**  
**SECTION OF THE NATIONAL IRRIGATION BOARD-MWEA IRRIGATION**  
**SETTLEMENT SCHEME**  
**AND**  
**IN THE MATTER OF SUB-ADVISORY COMMITTEE PROCEEDINGS AND AWARD**  
**MADE ON 12<sup>TH</sup> JUNE, 2014**

**BETWEEN**

REPUBLIC OF KENYA ..... APPLICANT

**VERSUS**

NATIONAL IRRIGATION BOARD ..... RESPONDENT

GLADWELL NYAMBURA        )

JULIA WAIHERA MBUGUA    )..... INTERESTED PARTIES

EX-PARTE .....JECINTA WANJIRU MUNIU

**JUDGMENT**

The applicant herein (JECINTA WANJIRU MUNIU) filed this Notice of Motion on 18<sup>th</sup> December 2014 seeking the following orders:-

1. *That an order of certiorari do issue to remove into this Honourable Court and quash the proceedings of the Sub-Advisory Committee of the National Irrigation Board – Mwea Irrigation Settlement Scheme made on 12<sup>th</sup> June 2014 in respect of rice holding No. 209 Unit 13D Mwea Tebere Section.*
2. *That orders of prohibition and mandamus do issue against the Senior Scheme Manager of National Irrigation Board – Mwea Irrigation Settlement Scheme to stop execution or proceeding with execution of the said award made on 12<sup>th</sup> June 2014 relating to rice holding No. 209 Unit 13D Mwea Tebere Section in favour of the interested parties herein or any other person and such execution if any be declared null and void and the Senior Scheme Manager be compelled to restore the entire rice holding in the name of the applicant herein as per the Court order given on 2<sup>nd</sup> February 2000 vide Wanguru Resident Magistrate Court Miscellaneous Succession Cause No. 26 of 1999 and also in compliance with the Irrigation (National Irrigation Scheme) Regulations made pursuant to Section 27 of the Irrigation Act Cap 347 Laws of Kenya.*
3. *That the interested parties be condemned to pay costs of this application and the exparte Chamber Summon dated 10<sup>th</sup> November 2014.*

From the applicant's affidavit and other supportive documents her case is premised on the following grounds, inter alia:-

1. *That she is the registered licensee of the rice holding No. 209 Unit 13D Mwea Tebere Section (hereinafter the rice holding) having succeeded her late husband JOSEPH MUNIU CHEGE through a Court case being Wanguru Resident Magistrate Miscellaneous Succession Cause No. 26 of 1999 which declared her the rightful successor.*
2. *That order has never been set aside and her mother in law's attempt to set it aside came to naught.*
3. *That notwithstanding the Court order, the Respondent's Advisory Committee at the behest of the interested parties convened a meeting on 12<sup>th</sup> June 2014 and awarded two (2) acres of the rice holding to the interested parties who have now invaded the same and started cultivating it.*
4. *That the Sub-advisory Committee of the Respondent acted in excess of its jurisdiction as the issue had already been determined in Wanguru Succession Cause No. 26 of 1999.*

GLADWELL NYAMBURA the 1<sup>st</sup> interested party swore a replying affidavit on behalf of herself and the 2<sup>nd</sup> interested party in which she deponed, inter alia:-

1. *That the rice holding was originally in the names of CHEGE NGACHA (deceased) who had two wives namely LUCIA WANJIRU (deceased) who had four (4) children and ESTHER WAIRIMU CHEGE (deceased) who had three (3) children.*
2. *That LUCIA WANJIRU and family were settled in Nyahururu where they live on five (5) acres of land.*
3. *That the late ESTHER WAIRIMU CHEGE (deceased) had three (3) children namely:- JOSEPH MUNIU CHEGE (deceased) GRACE NJERI CHEGE (deceased) and GEORGE MBUGUA (deceased) and after the death of CHEGE NGACHA, the family agreed that JOSEPH MUNIU CHEGE be appointed to succeed him in the rice holding in trust for the family and he was issued with a tenant card but he immediately prevented his mother the late ESTHER WAIRIMU CHEGE from utilizing the said rice holding.*
4. *That after JOSEPH MUNIU CHEGE passed away the applicant secretly filed Succession Cause No. 26 of 1999 and was appointed his successor and was issued with a tenant card and when the late ESTHER WAIRIMU CHEGE visited the respondent's Manager for purposes of filing succession casue in 2000, she was informed that the applicant had already been registered as successor.*
5. *That the interested parties thereafter lodged a complaint with the respondent's Manager in*

**2014 who then convened a Sub-Advisory Committee meeting on 12<sup>th</sup> June 2014 which awarded each of the interested parties one acre each out of the rice holding and they were issued with tenant cards while the applicant was awarded 2 ½ acres.**

- 6. That the respondent has powers to override the orders of Court if not made within the provisions of the Irrigation Act Cap 347 Laws of Kenya since it is the mandate of the respondent to determine the number of settlers in a scheme.**

On its part, the Respondent filed grounds of opposition stating that the award of its Sub-Advisory Committee dated 12<sup>th</sup> June 2014 was properly arrived at and was within its mandate as provided for under **Cap 347 Laws of Kenya** and that the respondent was never a party in Wanguru Resident Magistrate Court Miscellaneous Application No. 26 of 1999 or High Court Miscellaneous Application No. 48 of 2005.

In her further supporting affidavit, the applicant deponed that it was the Respondent which applied to Wanguru Court vide Miscellaneous Succession Cause No. 29 of 1984 to declare her late husband the successor to the rice holding in place of his late father and he was not to hold it in trust for any one else and after his death, the same Respondent applied vide Wanguru Resident Magistrate Court Miscellaneous Succession Case No. 26 of 1999 which declared her the successor and dismissed the objection of the late GEORGE MBUGUA who is the husband to the 2<sup>nd</sup> interested party. Further, that the 2<sup>nd</sup> interested party's application to review or set aside the Courts order was dismissed on 31<sup>st</sup> July 2002.

This is a Judicial Review application and it is now well settled that the remedy of Judicial Review is not concerned with the merits of the decisions which is the subject of the application but rather,

the decision making process itself. The grounds upon which the Court exercises its Judicial Review jurisdiction were stated in the case of **PASTOLI VS KABALE DISTRICT LOCAL GOVERNMENT COUNCIL & OTHERS 2008 E.A. 300** as follows:-

***“In order to succeed in an application for Judicial Review the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety..... Illegality is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality ..... Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards ..... Procedural impropriety is when there is a failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision”***

The Court was citing with approval the case of **COUNCIL OF CIVIL UNIONS VS MINISTER FOR CIVIL SERVICE 1985 A.C 374**. It is therefore clear that where the applicant can demonstrate a flagrant disregard of the law, a departure from procedure, a breach of the rules of Natural Justice or that the action complained of was in excess of jurisdiction, the Courts will not hesitate to quash the decision made.

Guided by the above principles it is not in doubt that following the death of the applicant's husband who had been appointed the successor of the rice holding in dispute, she moved the Court in Wanguru Miscellaneous Succession Cause No. 26 of 1999 and S.M. JUMA District Magistrate I, after hearing all the parties including the objector GEORGE MBUGUA CHEGE, delivered a judgment on 2<sup>nd</sup> February 2000 declaring that the applicant was the rightful successor/licencee of the rice holding subject of this case. The 1<sup>st</sup> interested party has deponed in paragraph eight (8) of her replying affidavit that the applicant ***“secretly filed Succession Cause No. 26 of 1999 where she was appointed successor and a***

**tenant card issued**". On the other hand, the respondent in its grounds of opposition has stated that the **"applicant and the interested parties conceded material facts from the Sub-Committee hence the award was arrived at as per the facts presented to the Committee"**. It cannot be true that Wanguru Miscellaneous Succession Cause No. 26 of 1999 was filed secretly because the proceedings show that the 2<sup>nd</sup> interested party's husband (GEORGE MBUGUA CHEGE) participated in the trial. Further, the respondent's Manager is named in the proceedings as the applicant and the Court order declaring the applicant as the successor/licencee was infact addressed to the said Manager (see applicant's annexure **JWN 1**). It is instructive to note that it was soon after the judgment of the Wanguru Court on 2<sup>nd</sup> February 2000 that the respondent proceeded to issue a tenant card to the applicant in respect to the rice holding dated 5<sup>th</sup> May 2000. All this information is captured in the respondent's Sub-Advisory Committee meeting's record of 12<sup>th</sup> June 2014 under the heading '**CASE BACKGROUND**'. The respondent cannot therefore allege that both the applicant and interested parties conceded material facts from the Sub-Advisory Committee. Therefore, the Court having declared the applicant as the successor to the rice holding on 2<sup>nd</sup> February 2000 with notice to the respondent, and there being no appeal filed from that decision, it was procedurally improper for the respondent's Sub-Advisory Committee to reverse that decision some fourteen (14) years later. The interested parties in their submissions have referred me to the case of **REPUBLIC VS CHAIRMAN ADVISORY COMMITTEE MWEA IRRIGATION SCHEME AND OTHERS EMBU H.C MISC CASE NO. 67 of 2006** for the proposition that the respondent was within its powers to do what it did. It is not in doubt that the management of the rice holding is a matter within the jurisdiction of the respondent which issues licences as was held by the late **Khaminwa J.** in the above case. The late Judge however stated that the respondent's Advisory Committee can override the orders of the Court **"If the same are not made within the provisions of the Act (Cap 347)"**. There is no suggestion that the trial Court in Wanguru Succession Cause No. 26 of 1999 acted in excess of its jurisdiction or beyond the provisions of **Cap 347 Laws of Kenya**. Indeed no appeal was even filed from that judgment and the respondent, pursuant to the said judgment, issued a licence to the applicant. The respondent's decision to reverse that decision some fourteen (14) years later, in the absence of any allegations that the applicant had been in breach of any of the rules governing the management of the rice holding was clearly improper and calls for intervention by this Court. It matters not that the applicant was present when the respondent's Sub-Advisory Committee made the decision subject of this application on 12<sup>th</sup> June 2014. The record shows that she informed the said Committee that she had succeeded her late husband as licencee to the rice holding following the Court's approval as contained in its judgment of 2<sup>nd</sup> February 2000. It was therefore not within the jurisdiction of the Respondent's Sub-Advisory Committee to reverse that order. As stated earlier, Judicial Review is not about the merits of the decision taken but rather, the process. The Sub-Advisory Committee of the Respondent may have had the best intentions in sharing out the rice holding among the parties herein. However, in doing so, it acted un-procedurally and its award is amenable to Judicial Review orders.

Upon considering all the evidence herein, I am satisfied that the applicant is entitled to the orders as sought in her Notice of Motion dated 18<sup>th</sup> December 2014. The applicant is also entitled to costs to be borne by the Respondent.

**B.N. OLAO**

**JUDGE**

**13<sup>TH</sup> NOVEMBER, 2015**

13/11/2015

Before

B.N. Olao – Judge

Gichia – CC

Mr. Wachira for Applicant – present

Ms Thungu for Mr. Ombachi for Respondent – present

Ms Munyendo for Ms Wangechi for Interested parties - present

COURT: Judgment dated, delivered and signed this 13<sup>th</sup> day of November, 2015 in open Court.

Right of appeal explained.

**B.N. OLAO**

**JUDGE**

**13<sup>TH</sup> NOVEMBER, 2015**