



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW APPLICATION NO. 90 OF 2011**

**IN THE MATTER OF: THE LAW REFORM ACT, CAP 26 AND THE LAND**

**CONSOLIDATION ACT, CAP 283, LAWS OF KENYA**

**AND**

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY FOR AN**

**ORDER OF CERTIORARI**

**BETWEEN**

**JOSHUA MURUYU M'IKIARA ..... EX PARTE  
APPLICANT**

**THE LAND ADJUDICATION OFFICER IGEMBE NORTH &  
SOUTH DISTRICTS ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup>  
RESPONDENT**

**AND**

**SAMUEL MEME M'MWERERIA .....  
INTERESTED PARTY**

**JUDGMENT**

The exparte applicant filed Chamber Summons dated 28<sup>th</sup> November, 2011 seeking leave to apply for an order of certiorari to bring into the court and quash proceedings, findings and decision of the 1<sup>st</sup> Respondent dated on 2<sup>nd</sup> November, 2011 in objection No. 606 in respect of land parcel No. 173 situated in AKIRANGONDU 'B' Adjudication Section. He also sought the leave so granted do operate as stay of implementation on the ground and in the Adjudication register/records of the decision and order of the 1<sup>st</sup> Respondent dated 2<sup>nd</sup> November, 2011 in objection No. 606 in respect of Land Parcel No. 173 situated in AKIRANGONDU "B" Adjudication Section. That the prayers in the Chamber Summons were granted by court on 29<sup>th</sup> November, 2011.

The exparte applicant filed the Notice of Motion on 7<sup>th</sup> November, 2011 seeking an order of certiorari do issue bringing into this court and quashing the proceedings, findings and decision of the 1<sup>st</sup> Respondent

dated 2<sup>nd</sup> November, 2011 in objection No. 606 in respect of land parcel No. 173, situated in AKIRANGONGU “B” Adjudication Section. The exparte applicant also sought costs of the Chamber Summons and of the Notice of Motion.

The exparte application is based on grounds set out in the statutory statement of facts dated 28<sup>th</sup> November, 2011 and supported by affidavit verifying the facts relied on dated 28<sup>th</sup> November, 2011 accompanying the Chamber summons. The exparte applicant’s main grounds are that the 1<sup>st</sup> Respondent had no jurisdiction to hear and determine the objection No. 606 alone. That he failed to constitute a committee to hear and determine the objection in terms of the applicable customary law. That he denied the exparte applicant a chance to call witnesses to support his case. That he breached the exparte applicant’s legitimate expectation to call witnesses in buttress of his case and be heard by the section’s committee. That the evidence of the exparte applicant that the land was then ancestral family land was disregarded. That the 1<sup>st</sup> Respondent did not understand the customary laws applicable in resolution of dispute over the land in Igembe area. That the exparte applicant was condemned unheard, contrary to the Rules of Natural Justice. That the beleaguered decision is erroneous, null and void ab initio.

The Respondent opposed the application and filed Replying Affidavit dated 8<sup>th</sup> November, 2012 through George Owour the Land Adjudication Officer in the officer of the Respondent. He contended the objection No. 606 affecting land No. 173 in AKIRANGONGU “B” was filed, heard and determined in accordance with Section 25 and 26 of the Land consolidated Act, Cap 283 Laws of Kenya. He averred that what is contested is 0.24 acres but it was only 1 acre which the applicant was entitled after hearing the objection. He contended that the Land Adjudication Officer heard the dispute and made his decision with the committee as per Section 26(1) of the Land Consolidation Act Cap 283, Laws of Kenya. The Land Adjudication Officer Stanley Baariu made an affidavit dated 1<sup>st</sup> October, 2012 averring that he was the chairman of the Land Adjudication committee for AKIRANGONGU “B” ADJUDICATION SECTION. He averred that objection No. 606 was heard by him with panel of Committee and even visited the site. He gave the names of the ten (10) committee members. He explained that both parties were heard and that the exparte applicant was given all the time to be heard.

The interested party Samuel MeemeM’Mwereria filed a Replying Affidavit dated 1<sup>st</sup> October, 2012 averring that the exparte applicant’s application is based on falsehood. He averred that the objection was heard by the Land Adjudication Officer in presence and participation of the Land Adjudication Committee led by its Chairman STANLEY BAARIU. He averred both parties gave evidence and were allowed to cross-examine each other and none opted to call witnesses and was denied the opportunity to do so. He even averred that parties and Committee visited the scene in presence of the demarcation officer. The interested party further deponed that the land in issue is not the applicant’s ancestral land but his family’s and his brother. He concluded by averring that the objection was handled very procedurally and professionally.

That when the notice of motion came up for hearing the advocates on record agreed that the notice of motion be determined by way of written submissions. The exparte applicant’s submissions were filed by M/S Carl Peters Mbaabu & Co. Advocates on 4<sup>th</sup> February, 2013. The interested party’s were filed by the firm of M/S Mbogo & Muriuki Advocates on 19<sup>th</sup> November, 2012. The Respondent counsel did not file any written submissions.

The exparte applicant in this application filed his objection proceedings under the provisions of the Land Consolidation Act. Section 9(1) of the Land Consolidation Act, Cap 283 provides:-

**“The Adjudication officer within whose district an adjudication section is situate shall appoint a Committee for each adjudication section from amongst persons resident in the adjudication section and each Committee shall consist of not less than twenty-five members”**

The section is couched in such a way that the word “shall” is used, meaning the Land Adjudication Officer is mandated to constitute a committee from amongst persons resident in the adjudication section and each committee should constitute of not less than twenty five (25) members. That such members

must not only be resident in adjudication section but must be identifiable or known and made to know that they are members of the committee.

Further under Section 9(2) of the Land consolidation Act it is provided:-

**“The Adjudication Officer shall appoint an executive officer for each committee within the district and such executive officer shall attend, and may speak, at any meeting of the Committee, but not vote”.**

This means the Land Adjudication Officer is mandated to appoint an executive officer for each Committee within the district who shall attend and may speak at any meeting of committee but shall not vote.

The committee by virtue of Section 11(1) of the Land Consolidation Act is under obligation to hear and determine objection in accordance with African Customary Law.

In hearing any objection the Land Adjudication Officer is under an obligation to hear the matter in accordance with Section 26(1) of the Land Consolidation Act which provides:-

**“Any person named in or affected by the Adjudication Register who considers such Register to be inaccurate or incomplete in any respect, or who is aggrieved by the allocation of land as entered in the Adjudication Register, may, within sixty days of the date upon which the notice mentioned in Section 25 of this Act is published at the office of the Regional Government Agent within whose district the adjudication area to which such Register relates is situated and such shall be endorsed upon the said notice), inform the Adjudication Officer, stating the grounds of his objection, and the Adjudication Officer shall consider the matter with the Committee and may dismiss the objection, or if he thinks the objection to be valid, order the Committee to take such action as may be necessary to rectify the matter and for this purpose the Committee may exercise all or any of the powers conferred by Section 21 of this Act”.**

A perusal of the objection proceedings do not support the averments of the Respondents affidavits by George Owour and Stanley Baariu that the objection was heard in presence of the committee members who also participated in all stages of the hearing and determination of the objection. The names of the members who Stanley Baariu listed as members of the committee were not recorded in the objection proceedings as having been present. Further there is no evidence that the listed persons are members of committee for Adjudication Section of AKIRANGONDU “B” Adjudication Section.

It is evident from the objection proceedings that the Respondent’s contravened statutory provisions stated herein above by purporting to deal with the objection proceedings without involving the AKIRANGONDU “B” Adjudication Section Land Committee. The Respondents acted contrary to Section 26(1) of the Land Consolidation Act, Cap 283. The decision as it is in ultra vires Section 26(1) of the Land Consolidation Act. It is illegal ab initio to say the least.

In **Meru HCJR MISC. APP. No. 99 of 2009 R - VS - District Adjudication officer and others** Hon Lady Justice Mary Kasango faced with a similar case as the one before me stated:-

**“The adjudication officer in hearing the objection by Grace acted in some instances ultra vires, illegal and in other instances contrary to the will of parliament as envisaged in Cap 283”.**

In this instant application the Respondent in proceeding to hear and determine the objection alone and without complying with the provision of Cap 283, I find that he acted ultra vires the Section 26(1) of the Land Consolidation Act. He acted illegally, unreasonably and contrary to clearly stated procedure of the law. He failed to give effect to the law that specifically spelled out or governed such proceedings that were before him.

The ex parte applicant avers that he was denied fair hearing by the Respondent's failure to constitute a committee to hear his objection and refused to allow him to call his 3 witnesses present namely John Kiburi, Joseph Kabilu and Jacob Kiringo. The ex parte applicant referred to paragraph 11 of his affidavit verifying facts relied upon dated on 28<sup>th</sup> November 2011. I have very carefully perused the objection proceedings and noted the ex parte applicant never indicated he had witnesses to call and was denied that opportunity. He took part in the objection proceedings without raising any objection and at no time did he seek any adjournment to call the witnesses mentioned in his affidavit verifying facts to be relied upon. I do not find any merits on that ground save that the trial was not fair for one reason of not constituting a committee to hear the objection as provided under the Act.

I have considered the application as earlier on stated and all Affidavits, which this court has analyzed and did not find any basis in the ex parte applicant's argument that the application is not opposed as the Respondents have responded through their Replying affidavits.

Having carefully considered the respective parties arguments and the relevant law I have no hesitation in holding and finding that the Land Adjudication Officer in dealing with the objection herein failed to act as provided by the Law governing such proceedings, before him. I am satisfied that this application is meritorious. For those reasons I grant the following orders:-

- 1. An order of certiorari is hereby issued to remove to this court and quash the proceedings, findings and decision of the 1<sup>st</sup> Respondent dated 2<sup>nd</sup> November, 2011 in objection No. 606 in respect of Land parcel No. 173 situate in AKRIANGONDU "B" Adjudication Section.**
- 2. The objection No. 606 in respect of Land Parcel No. 173 situate in AKIRANGONDU "B" adjudication be heard afresh by other Adjudication Officer with Adjudication committee as per Section 26(1) of the Land Consolidation Act.**
- 3. That as the mistake was made by the Land Adjudication Officer and not by the parties I direct that each party shall bear his own costs.**

**DATED AT MERU THIS 29<sup>TH</sup> JANUARY, 2014.**

**J. A. Makau**

**JUDGE**

Delivered in open court in the presence of:-

Mr. C. Mbaabu for ex parte applicant

Mr. Mogaka for 1<sup>st</sup> Respondent

Mr. Mbogo for interested party

**J. A. Makau**

**JUDGE**