



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**  
**JUDICIAL REVIEW APPLICATION NO. 9 OF 2012**

REPUBLIC ..... APPLICANT

VERSUS

MINISTER LAND APPEAL COMMITTEE

MBITA ADJUDICATION SECTION MBEERE NORTH .....1<sup>ST</sup> RESPONDENT

NGUNGI NTHUKIRE ..... 2<sup>ND</sup> RESPONDENT

NAAMAN IRERI SIGANA ..... 3<sup>RD</sup> RESPONDENT

AND

WILSON MURIUKI MUTEGI

MACHAKI MURUNGAMA

EVANS NJUE WARIRU

JOSEPH MBUGI NGARI

JACKSON NYAGA KARANI

JACOB NGONDI NGARI.....EXPARTE APPLICANTS

**JUDGMENT**

Having obtained leave on 17<sup>th</sup> September 2012, the ex-parte applicants filed this Notice of Motion on 4<sup>th</sup> October 2012 seeking the following substantive orders:-

1. ***Order of certiorari to remove into the High Court and quash the award of the Minister Appeals Committee – Mbita Adjudication Section of 16<sup>th</sup> February 2012 in Case No. 231 of 2000 in respect of land parcel No. MBEERE/MBITA/2593/2802, 2578, 2511, 2596, 2510, 2595 AND 1830***
2. ***Costs.***

This application is principally premised on the complaint that firstly, the applicants were condemned un-heard as they were not given an opportunity to state their case orally or in writing and secondly, that the committee did not have jurisdiction to arbitrary revoke valid land titles.

Submissions have been filed on behalf of the applicants and the 1<sup>st</sup> and 2<sup>nd</sup> respondents. I have considered those submissions as well as the application and annexures thereto.

In order to succeed in an application for Judicial Review, an applicant has to show that the decision or act complained of is tainted with illegality, irrationality or procedural impropriety. Illegality is where the decision making authority commits an error of law in the process of making the decision complained of. Acting without jurisdiction or ultra vires or contrary to the provisions of law or its principles are instances of illegality – see **PASTOLI VS KABALE DISTRICT LOCAL GOVERNMENT COUNCIL 2008 2 E.A 300.**

As stated above, the Ex-parte applicant's complaints are two fold. Firstly that they were not heard and secondly that the committee acted in excess of its jurisdiction by revoking titles to land.

The first complaint really has no merit. The record of the hearing before the Appeals Committee shows that the applicants were present and opted to be represented at the appeal by one MUTEGI MUKEMBGO of [Particulars Withheld] No. He gave sworn evidence on their behalf and was cross-examined by the other side. The applicants must have allowed him to represent them which he did in their presence as can be seen from the record. There was therefore substantial compliance with the rules of natural justice and they cannot now complain that they were not heard. They were heard through their chosen representative. I reject that complaint.

The other complaint is that the Appeals Committee had no jurisdiction in revoking title to land. That complaint is well merited. In its decision on appeal dated 16<sup>th</sup> February 2012, the Appeal Committee made the following order:-

***“The Appeal is granted and the disputed land is awarded to Nathan Sigana and Ngungi Nthukire of Nditi Clan”.***

There is evidence that while that decision was being rendered, parcels of land No. [Particulars Withheld] and 2595 were registered in the names of MM (a minor) and PGK. The decision of the Appeals Committee would essentially mean that those titles would have to be revoked. That is a jurisdiction of the High Court and not the Appeals Committee and in the circumstances, that decision was made in excess of jurisdiction and must be quashed.

It is also clear from the record that the decision of the Land Adjudication Committee was delivered on 19<sup>th</sup> November 1991. The 2<sup>nd</sup> and 3<sup>rd</sup> respondent filed an appeal against that decision in 2000 and the Minister's Appeals Committee made its decision on 16<sup>th</sup> February 2012. Under **Section 29 (1) of the Land Adjudication Act**, such appeal ought to have been filed within sixty days. The filing of the appeal in 2000 was therefore in contravention of the law and the applicants are therefore entitled to the orders sought in their Notice of Motion.

I have considered the submissions by the Attorney General on behalf of the 1<sup>st</sup> respondent in opposing this application. It is the submission of the Attorney General that whereas the applicants have the option of moving this Court through Judicial Review as they have done, that was not the right forum since the dispute involves ownership and occupation of land. The case of **SANGHANI INVESTMENT LTD VS OFFICER IN CHARGE NAIROBI REMAND AND ALLOCATION PRISON NBI H.C MISC APPLICATION NO. 99 of 2006** was cited. However, a copy of the said judgment was not attached to the submissions and I therefore have not had the advantage of perusing the said judgment. That notwithstanding, as I mentioned at the start of this judgment and as rightly confirmed by the Attorney General in his written submissions, the purpose of Judicial Review is, inter alia, to check that public bodies do not exceed their jurisdiction. That is precisely why the applicants have come to this Court. They have complained that the respondents exceeded their lawful mandate. That is a matter that this Court is entitled to interrogate. While it is true that the subject matter herein is land, the applicants have not asked this Court to make any orders as regards the ownership of any land as submitted by the Attorney General. The applicants have only asked this Court to remove into this Court and quash the

award of the Minister's Appeal Committee dated 16<sup>th</sup> February 2012 for having been arrived at in excess of jurisdiction.

Ultimately therefore, having considered all the matter herein, it is clear that the Minister's Appeal Committee acted in excess of its jurisdiction. I accordingly remove into this Court and quash the said Committee's decision dated 16<sup>th</sup> February 2012.

On costs, I order that each party meet their own costs.

It is so ordered.

**B.N. OLAO**

**JUDGE**

**27<sup>TH</sup> JUNE 2014**

27/6/2014

Before

B.N. Olao – Judge

Mwangi - CC

Mr. Gachau for Mr. Munene for Applicant - present

No appearance for Respondent

**COURT:** Judgment delivered this 27<sup>th</sup> day of June 2014 in open Court.

Mr. Gachau for Mr. Munene for Applicant present

No appearance for Respondent.

Right of appeal explained.

**B.N. OLAO**

**JUDGE**

**27<sup>TH</sup> JUNE, 2014**