



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

JUDICIAL REVIEW APPLICATION NO. 14 OF 2014

IN THE MATTER OF AN APPLICATION FOR ORDERS OF JUDICIAL REVIEW AND RICE HOLDING NO. 3435 UNIT W 4 WAMUMU

SECTION OF THE NATIONAL IRRIGATION BOARD – MWEA IRRIGATION SETTLEMENT SCHEME AND IN THE MATTER OF ADVISORY COMMITTEE PROCEEDINGS DATED 20TH MARCH 2014

BETWEEN

REPUBLIC APPLICANT

VERSUS

NATIONAL IRRIGATION BOARD RESPONDENT

AND

- 1. JOHN WAWERU)
- 2. MARGARET MUTHONI) INTERESTED PARTIES
- 3. ELIZABETH MUTHONI)

EX-PARTE JOHN GICHOBI KARUGUMI ALIAS KARABA KARUGUMI

RULING

By his ex-parte Chamber Summons dated 9th May 2014 and filed herein on 12th May 2014, the ex-parte applicant seeks the following orders:-

1. *That the ex-parte be granted leave to bring an application for certiorari to bring and quash the proceedings and award of the Sub-Advisory Committee of the National Irrigation Board – Mwea Irrigation Settlement Scheme dated 20th March 2014 in respect of rice holding No. 3435 Unit 4 Wamumu Section originally allotted to Karugumi Nyaga – deceased*
2. *That the ex-parte applicant be granted leave to apply for prohibitory and mandamus orders against the Senior Scheme Manager National Irrigation Board – Mwea Irrigation Settlement Scheme stopping him from allocating the rice holding No. 3435 Unit 4 Wamumu Section of the Mwea Irrigation Settlement Scheme and such allocation, if any, be declared null and void AND the manager be compelled to have the rice holding in issue allocated to the ex-parte applicant in full compliance of Regulation 7(2) of the Irrigation (National Irrigation Schemes) Regulation made pursuant to Section 27 of the Irrigation Act Chapter 347 laws of Kenya.*
3. *That the leave granted above do operate as a stay of execution and further proceedings*

respectively

4. That costs of this application be in the cause.

The said application was premised on the grounds stated therein and also on the annexed affidavit of the Ex-parte applicant JOHN GICHOBBI KARUGUMI alias KARABA KARUGUMI. The same was argued by Mr. Kahigah advocate.

I have considered the application, the supporting affidavit together with the annexures thereto and the submissions of Mr. Kahigah the applicant's advocate.

From the material placed before me, it is clear that the ex-parte applicant's father one KARUGUMI NYAGA (deceased) was the registered licensee of rice holding No. 3435 Wamumu Section Unit 4. Prior to his death, the deceased had written to the National Irrigation Board (the respondent herein) appointing the ex-parte applicant to succeed him as a licensee of the said rice holding. This was done pursuant to the provisions of **Rule 7(1) of the Irrigation (National Irrigation Schemes) Regulations** which empowers a licensee to nominate a successor during his lifetime to succeed him upon death. In breach of that provision, the respondent herein refused to grant the successorship of the rice-holding to the ex-parte applicant but instead awarded the same to the interested parties herein following a meeting held on 20th March 2014 to which the ex-parte applicant was not even invited nor was he afforded the right to be heard. Hence this application.

On the face of it, I am satisfied that the applicant has demonstrated sufficient grounds for the orders sought in this Chamber Summons. I accordingly allow the same and grant the leave sought. In accordance with **Order 53 Rule 3 of the Civil Procedure Rules**, I direct that the applicant do file the Notice of Motion within 21 days from the date of this ruling and serve the same upon the respondent, the interested parties and all other such persons as are affected by it within 14 days of filing and thereafter file an affidavit indicating who has been served.

I further direct that the leave granted herein shall operate as a stay of execution of the orders of the respondent's sub-Advisory Committee dated 20th March 2014.

The costs shall be in the cause.

B.N. OLAO

JUDGE

27TH JUNE, 2014

27/6/2014

Before

B.N. Olao – Judge

Mwangi - CC

Mr. Gachau for Kahiga for Applicant – present

COURT: Ruling delivered this 27th June 2014 in open Court.

Mr. Gachau for Kahiga for Applicant present.

B.N. OLAO

JUDGE

27TH JUNE, 2014