



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC JUDICIAL REVIEW NO. E006 OF 2021

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW IN THE NATURE OF CERTIORARI

AND

IN THE MATTER OF OBJECTION NO. 3466

AND

IN THE MATTER OF LAND PARCEL NO. 9280 KARAMA ADJUDICATION SECTION

REPUBLIC.....APPLICANT

DISTRICT LAND ADJUCIATION OFFICER TIGANIA EAST.....RESPONDENT

PAUL MWENDA MAINGI.....EXPARTE APPLICANT

MANII JOSEPH M'MUTURA.....INTERESTED PARTY

JUDGMENT

A. PLEADINGS

1. The notice of motion dated 15.3.2021 seeks orders of certiorari to call for and quash proceedings and the decision of the respondent delivered in December 2020 in A/R Objection No. 3466 concerning Parcel No. 9280 Karama adjudication section herein after the subject property. The application was supported by exparte applicant's affidavit sworn on 18.3.2021.
2. In the statement of facts dated 24.2.2021, the exparte applicant avers he was the recorded owner of the subject property which he acquired lawfully and undertook various developments. That the interested party filed an A/R Objection No. 3466 seeking for the exparte applicant to be removed from his original site and which was allowed by the respondent.
3. He averred that the respondent acted ultra vires and flouted the procedures as set out in the law by excluding committee members from participating in the objection proceedings.
4. In his affidavit verifying the facts sworn 24.2.2021, the exparte applicant deposed the land adjudication officer heard the dispute after which the area chief wrote a letter dated 1.2.2021 giving him twenty one days to vacate the land to which he replied and sought for the copy of the proceedings and the judgment. He annexed the three documents as **PM1, 2 and 3** respectively.
5. The exparte applicant averred the respondent flouted the law of by not involving the land committee members as required under the **Land Consolidation Act**.
6. The interested party opposed the notice of motion through a replying affidavit sworn by Manii Joseph M'Muturia on 14.4.2021.
7. The 1st ground was that the exparte applicant had never been allocated the subject land through any lawful process and could not possibly develop that which he never owned in the first instance.
8. The interested party also averred that the land adjudication officer followed the due process and that he was the recorded owner of the subject property since the exparte applicant's land fell elsewhere and did not border his land hence the reason he was told to move to his

rightful land. He stated that they were related as his brother in law and that he was only staying on the land after he chased away the interested party's sister who got temporary accommodation therein to run a small business in order to help cater for her children.

9. The interested party averred further through corrupt means was registered in the name of the exparte applicant hence the objection which was heard on 13.1.2021 by ten land committee members who found 0.05 acres of the land had shifted to the ground under the cover of plot No. 9280. He attached the proceedings together with the decision.

10. The interested party averred that by a letter dated 13.1.2021, it was confirmed that **Plot No. 3771 at Karama adjudication** was recorded in the exparte applicant's name as per **annexture NJM "4"**.

11. The interested party continued to aver that the exparte applicant should have exhausted all avenues available under Cap 283 before invoking the judicial review process.

B. WRITTEN SUBMISSIONS

12. The exparte applicant submitted the respondent had no powers to grant eviction orders hence acted outside the law by hearing the A/R Objection in the absence of the land committee.

13. On the other hand, the interested party submitted that there was nothing attached to show the exparte applicant was a registered owner of the subject land as alleged or at all.

14. It was submitted by the interested party that the exparte applicant had not attached the decision complained about thus making the application defective.

15. Further, it was submitted the proceedings/decision showed there were ten members of the land committee which heard and determined the matter and not the land adjudication officer alone as alleged. Reliance was placed on **Republic –vs- Inspector General of Police & Another Exparte Patrick Macharia Nderitu [2015] eKLR** on the proposition that a decision to be quashed must be illegal, irrational and with procedural impropriety; **Kenya National Examination Council & Another –vs- Commissioner of Customs Services Exparte Africa K-Link International Ltd Nairobi [2012] eKLR, on the scope of judicial review, Republic –vs- District Commissioner, Mbooni East & 3 others ex parte Nthimo Kiswii & another [2013] eKLR, Republic –vs- Kirinyaga Dispute Tribunal exparte Jeremian Wangonde Bundi [2006] eKLR.**

C. ISSUES FOR DETERMINATION

16. The issues for determination are whether the respondent followed the law in handling the matter and secondly if the court has jurisdiction to entertain the case.

17. **Order 53 of the Civil Procedure Rules** as amended on 26.2.2020 requires a party seeking for judicial review to serve the copies of the statement accompanying the application for leave together with the notice of motion, copies of affidavits accompanying the chamber summons, leave and a copy of the decision to be quashed duly verified by an affidavit with the Deputy Registrar.

18. The exparte applicant sought to quash the decision herein over the interested party's Parcel No. 9280 Karama adjudication section. The decision appears as part of **annexture PM "3"** to the affidavit verifying the facts sworn by Paul Mwenda Maingi on 24.2.2021. The proceedings took place on 24.11.2020. So on the issue raised that the proceedings were not attached to the notice of motion, my finding is that the exparte applicant complied with **Order 53 Rule 7 of the Civil Procedure Rules** before the hearing of the notice of motion.

19. The central players under the **Land Consolidation Act** unlike **Sections 9 and 25 of the Land Adjudication Act** are both the land adjudication committee and the land adjudication officer. See **Peter Kimandiu –vs- Land Adjudication Officer Tigania West District & 4 Others [2016] eKLR.**

20. The role of the land adjudication committee in an adjudication register objection is set out under **Section 26 (1) of the Land Consolidation Act**. The adjudication officer is mandated to consider the matter together with the land adjudication committee.

21. In this case, even though the names of the ten people appears on the proceedings, the court is unable to establish if they ever actively participated in the hearing and determination of the appeal process and later on owned the decision by appending their signatures and dating the decision.

22. The exparte chamber summons indicated that the decision complained about was made in December 2020 whereas the statutory statement of fact and the affidavit verifying facts was silent on the date the decision was made.

23. The interested party on the other hand attached the proceedings marked as **MJM "2"** to the replying affidavit claiming the proceedings were conducted on 13.1.2021.

24. On the first page, of **MJM "2"** however, the date for hearing was indicated as 24.11.2020. The copy of proceedings attached by the exparte applicant was not certified unlike the one by the interested party.

25. This court finds it inconceivable that both parties herein were unable to agree on the exact date of the hearing and whether or not the land adjudication committee who actively participated during the hearing and determination of the A/R objection.

26. Even though the respondent was duly served with the notice of motion, it did not make a response and confirm if it followed the law while hearing the A/R Objection. The ex parte applicant has argued that the land adjudication committee was not involved in the process. The interested party cannot therefore purport to answer for the statutory duties or obligations vested on the respondent. See **Republic –vs- Land Adjudication & Settlement Officer Tigania East; Kathio M' Igweta (Interested Party) [2018] eKLR.**

27. The ex parte applicant averred he had a constitutional right as to fair administrative action. The court has the supervisory role to ensure that the adjudication process was carried out in accordance with the law as held by **Okong'o J** in **Tobias Achola Osindi & 13 others –vs- Cyprianus Otieno Ogalo & 6 others [2013] eKLR.**

28. The process of hearing the appeal is bound by **Sections 4 and 6** of the **Fair Administrative Actions Act 2015** as read together with **Article 47 of the Constitution.**

29. In my view, land adjudication committee does not merely act in a cosmetic manner. They are supposed to actively perform their roles by engaging the parties to the appeal. They cannot solely surrender their decision making power to the land adjudication officer. They must also own up the decision by appending their signatures after the hearing.

30. The respondent submitted that the ex parte applicant should have exhausted the internal mechanisms under **Cap 283**. The decision under **Section 26 (1)** is final and not appealable to the Minister under **Section 26 (3) of the Land Consolidation Act**. The ex parte applicant was therefore properly before this court. See **Joseph Ndegwa & another –vs- M'abutu M'rinyu & 2 others [2022] eKLR.** See **Reuben Mwangela M'itelekwa (suing as the Legal Representative of M'itelekwa Mucheke) –vs- Paul Kigea Nabea & 2 others [2019] eKLR.**

31. The complaints raised by the ex parte applicant to go beyond the ascertainment of the rights and interests in land. He seeks to question the legitimacy of the adjudication process. See **Johnson Mbaabu Mburugu & another –vs- Mathiu Nabea & 9 others [2020] eKLR** and **Julius Kailikia Laaru –vs- Peter Kaigera Laaru [2020] eKLR.**

32. There was no indication through a response by the respondent whether the land adjudication committee who are the primary organs under **Land Consolidation Act** attended all the proceedings and made the decision. See **Republic –vs- District Land Adjudication & Settlement Officer, Igembe District Ex-Parte M'aciita M'mingaine & another [2016] eKLR** in line with **Sections 11 (1) (2), 21 and 26** of **Cap 283**.

33. On the twin issues set out for determination, my finding is the respondent did not follow both the **Land Consolidation Act** and the **Fair Administrative Action Act** hence this court has jurisdiction to step in and correct the process. The application therefore has merits.

34. The proceedings and the decision regarding A/R Objection No. 3466 concerning **Parcel No. 9280 Karama adjudication Section** are hereby brought before this court and are quashed.

35. The A/R Objection No. 3466 is hereby remanded to be heard by a different land adjudication officer and a land adjudication committee in line with the law within 60 days from the date hereof.

36. Costs to the ex parte applicant.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU

THIS 16TH DAY OF MARCH, 2022

In presence of:

Mis Tengeret for Bwonwonga for Interested Party

(Interested Party present in court)

Kieti for 1st respondent – present

Anampiu – absent for applicant

Court Assistant - Kananu

HON. C.K. NZILI

ELC JUDGE