



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL MISC. APPLICATION NO. 153 OF 2008

IN THE MATTER OF AN APPLICATION BY

REPUBLIC APPLICANT

VERSUS

1. MWINGI DISTRICT

COMMISSIONER

2. MINISTER FOR LANDS

RESPONDENTS

MUINGO IKUMBA INTERESTED PARTY

MUTINDI MWANGANGI EX PARTE APPLICANT

R U L I N G

1. The Notice of Motion dated 28/8/2008 and amended on 6/3/2012 seeks the following orders:-
 1. **“An order of Certiorari to remove to the High Court for the purpose of being quashed and quash the decision of the Mwingi District Commissioner made on 7th May 2008 in Appeal to the Minister Mwambui Adjudication Section Parcel No. 171 Appeal No. 182 of 2003 (Mutindi Mwangangi –vs- Muingo Ikumba).**
 2. **An order that the costs of this application and of these Judicial Review proceedings be borne by the Respondents in any event.”**
2. According to the statement of facts and the verifying affidavit, the Appeal to the Minister **Mwambui Adjudication Section** relating to **L.P. No. 171 Appeal No. 182 of 2003 (Mutindi Mwangangi –vs- Muingo Ikumba)** was not heard procedurally. That the District Commissioner instead of hearing the appeal proceeded to conduct a retrial or a re-hearing of the matter and proceeded to hear the evidence of the parties instead of hearing submissions based on the proceedings and judgment of the Land Adjudication Officer in **Objection No. 3 of 2001** which was the subject of the appeal, the Arbitration Board (**Land Case No. 1 of 1995**) and the Adjudication Committee (**Case No. 1 of 1994**). That the District Commissioner having decided to hear oral evidence failed to give the parties an opportunity to call witnesses. The District Commissioner is also blamed for failure to take into consideration the applicable **Kamba Customary Law** as envisaged by the **Land Adjudication Act (Cap 284 Laws of Kenya)**.
3. The Interested Party opposed the application. It is averred in the replying affidavit that the District Commissioner conducted the proceedings in a procedural manner as all the parties were given a chance to highlight any issues or evidence given at the committee stage. It is further stated that the Appeals authority may call on parties to give evidence previously given and also evidence

- from the authority appealed from.
4. There was no appearance entered for the Respondents although they were served.
 5. The application was canvassed by way of written submissions which I have duly considered.
 6. This is an application for Judicial Review. Judicial Review is not concerned with the private rights or the merits of the decision being challenged but is concerned with the decision making process. Its purpose is to ensure that parties are given fair treatment by the authority to which they have been subjected (*See David Kenya Adie V District Commissioner, Kisumu District & Another (2012) e KLR* where the Court of Appeal proceeded further to state as follows:-

“In other words, where the court is satisfied that the proper procedures were followed; where no impropriety of whatever nature is present; where there is no illegality or irregularity; where Rules of natural justice are observed to the letter; where the court or tribunal has considered the relevant law; and where the said court or tribunal has acted within its jurisdiction, then the Superior Court cannot interfere with the decision of that court or tribunal by way of quashing it. This is of course on the assumption that the court or tribunal has jurisdiction to deal with the subject matter before it in the first place because jurisdiction is the foundation from which all courts and tribunals draw their judicial authority.”

7. **Section 29 (1) of the Land Adjudication Act Cap 284** which provides for appeals to be heard by the Minister stipulates as follows:-

29. (1) Any person who is aggrieved by the determination of an objection under section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by-

- a. **delivering to the Minister an appeal in writing specifying the grounds of appeal; and**
- b. **sending a copy of the appeal to the Director of Land Adjudication,**

and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.”

8. Under **section 29 (4)** of the said **Act**, the Minister may by notice in the Gazette delegate his powers to hear appeals and his duties and functions to a public officer, hence the hearing by the District Commissioner.
9. One of the issues raised by the Applicant is that the District Commissioner deviated from the procedures expected in the hearing of appeals. The Applicant has however not demonstrated what constitutes the correct procedure for the hearing of appeals by the Minister. **Section 29** of the **Land Adjudication Act Cap 284 Laws of Kenya** does not set out the procedure to be followed in such appeals. However, the order must be just. There is no legal requirement for the Minister to only review the proceedings and decisions made by the Land Adjudication Officer, Arbitration Board or Adjudication Committee. Nothing set out in the Act bars the Minister from hearing evidence afresh. An examination of the proceedings before the District Commissioner reflects that both parties participated in the appeal, they testified and were cross-examined. The Applicant never complained before the District Commissioner that he was not ready to proceed nor raise the issue that he intended to call witnesses. Like the Court of Appeal in David Kenya Adie case (*supra*) when faced by a similar situation, I am satisfied that the Applicant was given a fair hearing and no rules of natural justice were flouted.
10. On the issue of the application of Customary Law, it is clear from the proceedings before the District Commissioner made reference to sittings by elders, dowry payments made before the marriage and the return of the dowry after the resolution of a marriage. Indeed the District Commissioner in his finding made the following observation:-

“It was also established that Muingo (the Respondent) was duly married to the late Mwangangi and the marriage was never dissolved.”

The allegation that the District Commissioner failed to consider the applicable **Kamba Customary Law** therefore has no basis.

11. With the foregoing, I find no merits in the application and dismiss the same with costs to the Interested Party.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this **19th** day of **June 2014**.

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B. THURANIRA JADEN

JUDGE