



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW APPLICATION NO. 21 OF 2014**

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF JUDICIAL REVIEW AND RICE HOLDING NO. 227 UNIT T-6 TEBERE SECTION OF THE NATIONAL IRRIGATION BOARD – MWEA IRRIGATION SETTLEMENT SCHEME**

**AND IN THE MATTER OF SUB-ADVISORY COMMITTEE PROCEEDINGS AND AWARD DATED 15/4/2014**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**NATIONAL IRRIGATION BOARD .....  
RESPONDENT**

**AND**

**1. FREDRICK MUGWERU MUGO..... INTERESTED  
PARTIES**

**2. SYMON WAMBUGU MUGO**

**EX-PARTE .....DANSON MUTE  
MUGO**

**RULING**

The exparte applicant has sought by his Chamber Summons dated and filed in this Court on 12<sup>th</sup> September, 2014 leave to bring into this Court and quash the proceedings and award of the Sub-Advisory Committee of the National Irrigation Board – Mwea Irrigation Settlement Scheme dated 15<sup>th</sup> April, 2014 in respect of rice holding No. 227 Unit T-6 Tebere Section originally allocated to DANSON MUTE MUGO (applicant herein) measuring 4 ½ acres. The exparte applicant also seeks leave to apply for prohibitory and mandatory orders against the Senior Scheme Manager National Irrigation Board – Mwea Irrigation Settlement Scheme stopping him from allocating the said rice-holding or portions thereof to the interested parties or any other person and such allocation, if any, be declared null and void and the manager be compelled to restore the entire rice-holding to the names of the exparte applicant in compliance with the National Irrigation Schemes Regulations made pursuant to Section 27 of the

**Irrigation Act** and also as per the orders of the Court issued vide Wangure Senior Resident Magistrate Court Misc Succession Cause No. 26 of 1984 dated 8<sup>th</sup> February, 1985. Finally, the exparte applicant seeks that the above operate as a stay of execution and further proceedings respectively.

I have considered the application, the verifying affidavit and statement of facts. The exparte applicant's case, as I can discern from the material before me, is that the original rice-holding No. 227 Unit T-6 Tebere Section was allocated to his late father (MUGO NGAI) and upon his demise in 1958, the same was succeeded by the exparte applicant following a consent order of all the family members in Wanguru Misc Succession Cause No. 26 of 1985 after which the rice-holding was registered in the names of the exparte applicant who has enjoyed peaceful vacant and exclusive possession to-date. However, on 15<sup>th</sup> April, 2014 and in breach of that consent order, the Sub-Advisory Committee of the National Irrigation Board constituted a committee that deliberated on the said rice-holding and sub-divided the same into three (3) portions which were shared out between the exparte applicant and the interested parties. It is the exparte applicant's case that the orders of 15<sup>th</sup> April, 2014 are illegal, null and void as they purport to overturn a lawful Court order.

In my view, the exparte-applicant has established sufficient grounds for the orders sought. In accordance with **Rule 3 (1) of Order 53 of the Civil Procedure Rules**, I direct that the applicant shall file the Notice of Motion within 21 days from the date hereof. I further direct pursuant to **Rule 3 (2)** of the said order that the applicant shall serve the said Notice of Motion on the respondents, the interested parties and all such persons as are affected by it within 14 days of filing. The applicant shall then file an affidavit stating who has been served with the said Notice of Motion.

I further direct pursuant to **Rule 1 (4) of Order 53 Civil Procedure Rules** that the leave herein granted shall operate as a stay of execution of the orders of the Sub-Advisory Committee of the National Irrigation Board dated 15<sup>th</sup> April, 2014 and further proceedings.

Costs shall be in the Notice of Motion.

**B.N. OLAO**

**JUDGE**

**25<sup>TH</sup> SEPTEMBER, 2014**

25/9/2014

Before

B.N. Olao – Judge

Mwangi – CC

Mr. Ithiga for Kahiga for Applicant – present

Respondent – absent

COURT: Ruling delivered in open Court this 25<sup>th</sup> day of September, 2014.

Mr. Ithiga for Kahiga for Applicant present.

**B.N. OLAO**

**JUDGE**

25<sup>TH</sup> SEPTEMBER, 2014