



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND CORUT**

**AT MERU**

**JUDICIAL REVIEW APPLICATION NO. 13 OF 2018**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE DIRECTOR OF LAND ADJUDICATION.....1<sup>ST</sup> RESPONDENT**

**THE DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER,**

**IGEMBE NORTH DISTRICT.....2<sup>ND</sup> RESPONDENT**

**THE CHIEF LANDS REGISTRAR.....3<sup>RD</sup> RESPONDENT**

**THE DISTRICT LAND REGISTRAR IGEMBE.....4<sup>TH</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....5<sup>TH</sup> RESPONDENT**

**JAPHETH KAMOYO.....INTERESTED PARTY**

**EXPARTE APPLICANT.....REUBEN LIRIA**

**JUDGMENT**

1. By a notice of motion dated 14.8.2018 the exparte applicant prays for; (a) orders of prohibition against the 3<sup>rd</sup> & 4<sup>th</sup> respondents stopping them from effecting the registration under Land Registration Act 2012 regarding land Parcel No. Akirangondu A 5796 and 2966 Igembe and (b) mandamus compelling the 1<sup>st</sup> – 4<sup>th</sup> respondents to amend or to readjust their records including registers and maps, and to reconstitute or reinstate to the applicants Parcel No. 5796, the portion of 0.30 acres unlawfully or otherwise improperly alienated by the respondents and by the interested party from his parcel number to the interested party’s parcel number Akirang’ondu ‘A’/2966.

2. The notice of motion is supported by the grounds on the face of it, the statutory statement of facts dated 30.7.2018 and affidavit verifying the facts of the even date by Reuben Liria.

3. The exparte applicant averred his Parcel No. bordered the interested party’s parcel of land measuring 1.0 acre and was so recorded under the Land Adjudication Cap 284 in 1960’s to the late M’Barubua Kaibuali to which the exparte applicant is a beneficial owner and has been in occupation with various development therein.

4. The exparte applicant averred he sought for and obtained letters of administration and that there had been no official objection lodged or claim over the full acreage by the interested party or any other person. The exparte applicant averred on 12.12.2015 the interested party by force entered into his parcel of land, fenced off and took vacant possession of approximately 0.30 acres of his Parcel No. 5795 which acts were unlawful, and undertaken in connivance and collusion with the 1<sup>st</sup>-3<sup>rd</sup> respondents who had allegedly excised the said portion after the adjudication section was declared complete and final, yet it had never formed part of Parcel No. 2966.

5. Further the exparte applicant averred efforts to seek for the supply of the official records including maps and register regarding Parcel No. 5796 from the respondents have been futile. The exparte applicant averred the alleged alterations or changes by the 1<sup>st</sup>-4<sup>th</sup> respondents were unlawful and ultra vires their powers and functions.

6. In the affidavit verifying facts, the exparte applicant repeated the contents of the statutory statement of facts save to add that the deceased

had left the suitland duly recorded, owned and or occupied by him given the limited grant of letters of administration ad litem, issued to him on 16.8.2016 in Meru HC Misc Application No. 134 of 2016.

7. The respondents were duly served with the ex parte chamber summons dated 30.7.2018 and the notice of motion. A return of service was filed on 5.9.2018 sworn by Robert M. Nyagah on 20.8.2018, confirming service.

8. On 7.11.2021 the court granted leave to the respondents and the interested party to file and serve any responses within 45 days from the date hereof.

9. Similarly the parties on 21.2.2022 were directed to put in written submissions by 3.3.2022. The 1<sup>st</sup> to 5<sup>th</sup> respondents by written submissions dated 18.2.2022 state the orders sought in the notice of motion are misplaced, nonstarter untenable and overtaken by events.

10. Regarding the prayer for mandamus the 1<sup>st</sup> – 5<sup>th</sup> respondents submitted there must be a legal duty to act, owed to the ex parte applicant, a clear right to the performance of that duty. It was submitted the ex parte applicant failed to avail any evidence that the 1<sup>st</sup>-4<sup>th</sup> respondents have clear and express statutory duty to amend and or to readjust their records including registers and maps to reconstitute and or reinstate to the ex parte applicants Parcel No. Akirang'odu A/5796 the portion allegedly taken therefrom and included in the interested party's parcel no. Akirang'odu A/2966. Additionally the ex parte applicant submitted the ex parte applicant had not demonstrated that he filed objection proceedings to the register as provided under Section 26 of the Land Adjudication Act and the Land Consolidation Act if he was affected by the register.

11. As concerns the affidavit verifying the facts dated 30.7.2018, the 1<sup>st</sup>-5<sup>th</sup> respondents submitted there was no evidence the applicant had requested the respondent to perform what is being sought and the same was refused.

12. This court is being asked to issue an order of mandamus compelling the 1<sup>st</sup>-4<sup>th</sup> respondents to re-adjust their record, maps and registers to reconstitute and or reinstate some 0.30 acres unlawfully or otherwise improperly alienated by the respondents and included in the interested party's Parcel No. 2966 from Parcel No. 5796. As regards an order of prohibition the court is asked to prohibit the 3<sup>rd</sup>-4<sup>th</sup> respondents from effecting the decision aforesaid.

13. It is trite law that parties are bound by pleadings and issue flow from the pleadings. The ex parte applicant averred Parcel No. 5796 was demarcated as one acre but was later on reduced by 0.30 acres in favour of the interested party to his detriment.

14. The burden of proof under Sections 107 & 109 of the Evidence Act lay with the ex parte applicant to establish:-

*(i) That his Parcel No. 5796 was recorded as measuring 1 acre during the adjudication process in favor of the deceased.*

*(ii) It has been reduced in size to the extent of excision of 0.30 acres in favour of the interested party.*

*(iii) Its actual size at the moment is 0.70 acres and not 1.0 acres.*

*(iv) There exists a record and decision to that effect as a matter of fact and law.*

*(v) The excision and or alteration of the record, maps and registers occurred after the adjudication record was declared final and complete.*

*(vi) The respondents acted contrary to law.*

*(vii) The ex parte applicant has sought but has been denied access to the official records, maps and registers.*

15. In this application the ex parte applicant has attached no single document emanating from the 2<sup>nd</sup> respondent indicating any existing rights and interests in favour of his deceased relative M'Amburubua M'Kabuali regarding Parcel No. 5796. Akirang'odu, including the record of existing rights usually issued at the time of land adjudication. Similarly there was nothing attached to the affidavit verifying facts regarding parcel no. 2966 in favour of the interested party purporting to indicate its size and measurements were different from the way it was during adjudication period.

16. The ex parte applicant made allegations that adjudication record including the maps and registers were tampered with by the 1<sup>st</sup>-5<sup>th</sup> respondents in favour of the interested party. No single letter of complaint was attached to the supporting affidavit indicating when the alleged interference occurred, the manner in which it occurred and seeking for a remedial action.

17. An order of mandamus is in the nature of a public duty to remedy defects of justice and is issued where a legal right exists see **Republic vs Attorney General and another ex parte Orbit Chemical Ltd (2017) eKLR**.

18. In this instance the ex parte applicant has not demonstrated what specific public duty the respondents have failed to undertake and which have infringed on his legal rights.

19. Article 35 as read together with Article 47 of the Constitution gives the ex parte applicant the right to access to information held by the state and fair administrative action. The ex parte applicant did attach any single request in writing or otherwise made, inquiring and or seeking for the supply of any maps registers or decision(s) made regarding the suit land particularly on the alleged excision.

20. This court was also asked to issue orders of prohibition against the 3<sup>rd</sup> – 4<sup>th</sup> respondents from effecting registration under the Land Registration Act in favour of the interested party. The ex parte applicant had the onus to provide details on when the adjudication section was declared complete and final.

21. Further the ex parte applicant has not told the court if he checked the register after it was published and raised any questions or complaints that his parcel of land did not tally or conform with the record of existing rights. Similarly the ex parte applicant has not stated under what law the adjudication section was falling under. ***See Suchan Investment Ltd vs Ministry of National Heritage and Culture (2016) eKLR.***

22. In my view the ex parte applicant made mere allegations which were not supported by any factual or documentary evidence on which the court could find him deserving of the orders or prayers sought.

23. There was no nexus between the ex parte applicant, the specific facts contained in the statement of facts and the public documents held by the respondents vis a vis the interested party herein and the prayers sought.

24. In the circumstances, I find the notice of motion dated 14.8.2018 lacks merits. The same is dismissed with costs. ***See Republic vs University of Nairobi & 3 others ex parte Patrick Best Oyeso (2018) eKLR.***

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT**

**THIS 27<sup>TH</sup> DAY OF APRIL, 2022**

**In presence of:**

Miss Kendi for the respondents

**HON. C.K. NZILI**

**ELC JUDGE**