



REPUBLIC OF KENYA

High Court at Meru

Miscellaneous 2 of 2008

D. K. NJAGI MARETE.....APPLICANT

VERSUS

LAND ADJUDICATION OFFICERRESPONDENT

J U D G M E N T

The ex-parte applicant filed Notice to the Registrar under Order LII Rule 1(3) of Civil Procedure Rules on 31st July, 2007 together with statutory statements of facts a verifying affidavit and a copy of Limited Grant of Letters of Administration ad Coligenda Bona. The ex-parte applicant filed Chamber Summons dated 1st August, 2007 on 3rd August, 2007, seeking leave to apply for an order of certiorari to remove into this honourable court and quash the decision by the Land Adjudication Officer, Mariani Adjudication Section Meru South District made on 1st February, 2007.

The applicant also sought leave to apply for an order of Mandamus to compel the Land Adjudication Officer, Mariani Adjudication Section, Meru South District, to revoke all entries in the Adjudication register in respect of plot numbers 1105, 4539, 1397(3197) 1452 (1542) and 1286 and rectify the record and adjudication register to reflect true ownership of the estate of the late Marete Njagi alias Kangangi Njagi alias Marete Njagi M'Mwiru in plot number 839. That leave was granted by court on 28/3/2007.

That after leave was granted the ex-parte applicant filed a Notice of Motion on 12th September, 2007. The grounds in support are set out in the statement of facts and the verifying affidavit of the ex-parte applicant D. K. Njagi Marete. The application is opposed. The respondent on his part swore a replying affidavit dated 23rd October, 2012 in opposition to the application.

When the application came up for hearing both Counsel agreed the application to be determined by way of written submissions. The learned Counsel for the applicant filed their written submissions on 10th December, 2007 but the respondent has to date not filed any submissions.

The facts of his application are that the ex-parte applicant is a legal representative of the estate of the late Marete Njagi whereas the respondent is the Land Adjudication Officer appointed under Section 4 of the Land Adjudication Act, Cap.284 Laws of Kenya with powers to determine matters of Land Adjudication under the same Act. That the deceased as averred by the ex-parte applicant was the lawful registered proprietor of all the interest in Mariani Adjudication Section Plot No.839 measuring 2 acres which plot has now been ceded to plot numbers 1105, 3977, 1542 and 1286 leaving a balance of 1.3 acres. That 0.94, 0.60, 0.21 and 0.06 acres were respectively ceded to plot numbers 1105, 3197, 1542 and 1286 from the original 2 acres in plot No.839 belonging to the deceased with further 0.06 going to public utility. That in 2005 the ex-parte applicant moved the Mariani Land Adjudication Committee in respect of the deceased plot No. 839 in objection numbers 1536, 1537, 1538, 1539 and 1540. That the respondents were duly served and when the same came up for hearing only one respondent showed up. That on 1st February,

2007 the Land Adjudication Officer dismissed all the ex-parte applicant's objections in their entirety and with costs.

The ex-parte applicant contended that the Land Adjudication Officer and his Committee proceeded with the hearing and produced documents of questionable authenticity in support of the absent respondents and the transactions that resulted in the ceding of a whole 1.75 acres from the original 2 acres in plot No. 839 owned by the deceased. That 0.94 acres and 0.81 acres were ceded to Njau Rufus and Muchiri Muguongo respectively who were absent at the hearing into plot No's 1105, 3197, and 1542 respectively. He conceded that 0.06 acres was ceded to Kamwara Mwaria in plot No. 1286 and who had not adduced credible evidence on his ownership and claim from the original plot No.839. The ex-parte applicant contended in absence of the respondents and their evidence the Land Adjudication Officer, Mariani Section was in error in confirming the ceding of various portions from the deceased's plot No. 839 which was beyond his lawful mandate as per the Land Adjudication Act. The ex-parte applicant consequently averred that the entries made to the register reducing the entire ownership of the land by the deceased to 0.13 acre are both unlawful and unjust in absence of any evidence considering that the letter produced in support of the deceased's purported transfer was written by a stranger not known to any of the parties to transaction, as per ex-parte applicant's allegations. He further alleged that during the deceased lifetime he was not invited or warned in regard of the proceedings and cases related to plot No.839 Mariani Adjudication Section. He further faulted the Land Adjudication Officer for failing to summon Muchiri Muguongo to certify and defend his position as a respondent. He concluded by averring that the process of hearing and determining the matter before the Land Adjudication Officer was fundamentally fraudulent and could not result in a fair decision.

The respondent on his part in a replying affidavit dated 23rd October, 2012 confirmed the ex-parte applicant having filed objections to the adjudication register vide objections Nos.1536, 1537, 1538, 1539 and 1540 which were heard on 31/1/2007 and a ruling delivered on 1/2/2007 dismissing the objections. The certified copies of the proceedings and ruling attached to the affidavit and marked "JMN". The objections were in relation to land parcel Nos 1105, 4539, 1397, 1452 and 1258 and were filed pursuant to the provisions of the Land Consolidation Act Cap.283 and not the Land Adjudication Act Cap.284. The respondent averred that the land No.839 within Mariani Adjudication Section does not measure 2.00 acres but 0.13 acres. That from the respondent's record land Plot No.839 was originally created from Plot No.186 which belonged to one Muchiri Muguongo in or about 1975 pursuant to an objection to the record of existing rights No.804/1975 filed by ex-parte applicant's father who is now deceased.

That from the adjudication record through an objection No.2508 to the record of existing rights and Land Committee case No.69/81 two new parcels of land namely No.1105 and Plot No.1286 comprising of 0.94 acres and 0.06 acres were created. The respondent annexed the objection and ruling marked "JMM2". That further vide committee cases Nos.23/85 and 1/89 new parcels were created from P.No.839 being 1286 and 3197 comprising of 0.06 and 0.06 acres respectively and were registered in the names of Kamwara Mwaria Muguongo. The respondent further averred from record in his possession Plot No.4339, 1397 and 1452 belongs to Mugambi Henry M'Mbaini, Ephantus Njoka Kanga and Martha Mukwanjagi Nyaga and that there is no evidence at all that these plots originated from plot No. 839. That the register clearly showed Plot No. 1105 was transferred to Rufus Njau being the ex-parte applicant's father vide an objection to record of existing of rights No.804 of 1975 and that the same was never ceded as alleged in ex-parte applicant's affidavit. He further averred that 0.06 of an acre was not ceded to Kamwara Mwaria as the new owner but was awarded following Land Adjudication Committee case No. 23/85 and 1/89, the respondent further averred that S. N.Nyakoria had the benefit of the complete adjudication record at the time he heard the objections filed by ex-parte applicant and he did not therefore go beyond his powers in accordance with the provisions of the Land Consolidation Act. The respondent denied all allegations of having acted unfairly and not in accordance with the provisions of law. He alleged all entries made in the adjudication register were done lawfully and during the life time of the ex-parte applicant's father, now deceased and no objection was ever received from ex-parte applicant's father.

In the instant case I have gone through the pleadings, affidavits, proceedings and findings by the Land

Adjudication Officer. I have considered the ex-parte applicant's grounds for seeking orders of Judicial Review in this case. The ex-parte applicant was supposed to prove his claim in his objections, the fact that the respondents in Plot No.1105, 4539, 1397(3197) and 1452 (1542) did not attend the hearing to adduce evidence on their interest in the said plots and the finding in their favour cannot be said to be contravention of the letter and spirit of the Land Adjudication Act. The Land Adjudication Officer acted lawfully and within the law by referring to validly existing records of register even in absence of the respondents. The respondent was not biased nor did he act unfairly by referring to the register which is a public document and which document the applicant did not point out how the same was not authentic. The ex-parte applicant's father during his life time had every opportunity to raise whatever objection he had and would have been heard and lawful decision made. He never raised any objection to the register. Incidentally during the hearing of the objection the ex-parte applicant was heard and a fairly considered decision given after considering all evidence. The decision was not based on extraneous matters.

I have further gone through the proceedings and ruling by the Land Adjudication Officer and I find that he did go against the rules of natural justice. He acted on matters before him and heard all parties present. No party was denied an opportunity to be heard. He did not breach any express provision of the Land Adjudication Act nor of the Land Consolidation Act Cap.283. The decision is based on evidence and it is just. The objections were filed pursuant to provisions of the Land Consolidation Act Cap.283 and not the Land Adjudication Act Cap.283.

Consequently, I find no error in determining the objections. In view of the foregoing, I find not merit in the ex-parte applicant's notice of motion dated 6th August, 2007 and the same is accordingly dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED AT MERU THIS 19TH DAY OF FEBRUARY, 2013.

J. A. MAKAU
JUDGE

Delivered in Open Court in presence of:-

- 1. Mr. Muriuki for the ex-parte applicant***
- 2. Mr. Menye for the respondent***

J. A. MAKAU
JUDGE