



REPUBLIC OF KENYA

High Court at Embu

Judicial Review 51 of 2011

***IN THE MATTER OF AN APPLICATION BY JOHN MUGO NJERU FOR LEAVE TO APPLY
FOR AN ORDER OF CERTIORARI***

AND

IN THE MATTER OF THE LAND ADJUDICATION ACT

AND

IN THE MATTER OF LAND PARCELS NO. MAVURIA/KIRIMA/1969

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE HON. ATTORNEY GENERAL.....1ST RESPONDENT

MINISTER FOR LANDS.....2ND RESPONDENT

AND

JOHN MUGO.....EXPARTE APPLICANT

AND

DAUDI NGARI NJIRU.....INTERESTED PARTY

RULING

This is the Notice of Motion dated 21/11/2011 brought under Order 53 Rule 3 & 4 of the Civil Procedure Rules 2010 and Section 8 & 9 Law Reform Act for an order of certiorari quashing the award and decision given in favour of DAUDI NGARI NJIRU by Special District Commissioner, dated 10/3/2011 in the Minister's Land Appeal Case No. MAVURIA/KIRIMA/1969.

He states that his application is grounded upon the statutory statement and the affidavit of the applicant. In his affidavit he is clearly challenging the decision arrived at by the Special District Commissioner. He has filed this claim as a representative of his deceased brother (SIMON PETER

NJIRU).

The Attorney General filed the following grounds of opposition dated 1st May 2012.

- 1. The Application as drawn and taken out is bad in law and fatally defective for non compliance with the mandatory provisions of Order 53(2) of the Civil Procedure Rules.**
- 2. The applicant has not made out a case for judicial review proceedings as the application lacks supporting facts and/or with no evidential value.**
- 3. The applicant has no locus standi to bring these proceedings and has not demonstrated sufficient interest.**
- 4. The Respondent acted within jurisdiction and in accordance with the rules of natural justice.**
- 5. The Applicant is challenging the decision instead of the decision making process.**
- 6. The orders being sought by the Applicant are ambiguous as he has not specified how the award being adopted was unlawful.**
- 7. The court followed due process of the law when adopting the award.**
- 8. The application lacks merit, its frivolous and vexatious and only amounts to an abuse of the court process.**

The interested party has filed a replying affidavit opposing the application. Salient issues raised are:-

The applicant lacks locus standi

- ***He should have filed originating summons and not Judicial Review.***
- ***The Minister's decision under the Lands Adjudication Act Cap 284 Laws of Kenya is final.***
- ***That the land MBEERE/KIRIMA/1969 does not exist and any orders made on it shall be in vain.***

Mr. Kariithi for the exparte applicant submitted that the applicant has authority to file the application under Article 22(1) & (2) of the Constitution. He also cites Article 22(3)(d) of the Constitution. He cites bias and breach of rules of natural justice. He has cited fraud by one Justine Nyaki Ngure the Assistant Chief. He has given quite a bit of detail on this.

Ms. Onyoni Opini & Gachuba for the interested party also filed written submissions and a list of authorities. Their main issues are 2:

1. Locus standi of the applicant. Ref:

(a) TROUISTIK UNION INTERNATIONAL & ANOTHER VS MBEYU & ANOTHER [1993] eKLR

(b) OTIENO VS ONGO & ANOTHER [2008] 1 KLR

2. Jurisdiction of the Minister to hear adjudication appeals.

He submitted that the Applicant is challenging the decision instead of the process. In the applicant's affidavit and even the submissions by Mr. Kariithi its clear the applicant is not happy with the way the evidence was analyzed by the Special District Commissioner. He feels that since he availed more evidence the decision should have been in his favour.

He also talks of a fraudulent document having been relied on by the special District Commissioner. He has not clearly come out to show that the Special District Commissioner was biased. He is attacking the decision arrived at. He is saying the decision arrived at was not on merit. That is an area for an appeal Court and not Judicial Review.

The Notice of Motion dated 21/11/2011 has no grounds to support it. The applicant states that he relies on the statutory statement. There is no statement of facts accompanying the Notice of Motion. The only statement of facts that the applicant ever filed was the one accompanying the chamber summons seeking leave.

Mr. Kariithi submitted that the Special District Commissioner had no authority to sit on the appeal as he was not a Minister. In other words he is saying the District Commissioner had no jurisdiction. This was never raised as one of the grounds of the application for the judicial Review. And in any event the Minister of Lands has power to delegate this duty to any officer to chair the appeal boards. He/she does not need to personally sit.

The applicant has not shown how the DC acted ultra vires. The officers to whom these powers are delegated to, do not need to carry those letters around and show them to the parties. This ought to have been filed as a ground to enable the Attorney General respond to it. As was held in the case of **TROUISTIK UNION INTERNATIONAL & ANOTHER (Supra)**, the estate of a deceased person is vested in the legal representative.

And a legal representative is a person who has been issued with letters of grant. This is provided for under Section 82(a) of the Law of Succession Act. Its true that under the Land Adjudication Act any one can appear to represent a dead person. But the Court which deals with estates of deceased persons operates under the Law of Succession Act which gives specific direction on how such matters should be handled. The Applicant cannot fail to follow this procedure and hide under Article 22(1) & (2) of the Constitution. The applicant herein has a specific claim which is the estate of his deceased brother.

It can not therefore be anyone having a claim on this estate who can file a claim. The Law of Succession is clear that it must be the legal representative. The applicant has not shown that he is the legal representative. He therefore lacks the *locus standi* specific to this estate of his deceased brother.

It was the duty of the applicant to show that the District Commissioner lacked jurisdiction and there was an error of law fraud or breach of rules of natural justice perpetrated by the Special District Commissioner. I am guided by the decision of Justice Tunoi (as he then was) in the case of **REPUBLIC VS MINISTER FOR LANDS AND SETTLEMENT EXPARTE NARANKARIK & ANOTHER MISC. CIVIL CASE NO. 30/1986**. He cited **Hansburys Laws of England 4th Vol. 1 paragraph 147** which provides:-

“Certiorari lies on the application of a person aggrieved to bring the proceedings of an inferior tribunal before the High Court for review so that the Court can determine whether they shall be quashed, or to quash such proceedings. It will issue to quash a determination, error of law on the face of the record, or breach of the rules of natural justice or where the determination was procured by fraud, collusion or perjury.”

The applicant failed to prove any of the above grounds for granting the order of certiorari. Secondly he has been found to lack *locus standi* to file the claim. The other grounds of opposition have been swallowed in the above discourse.

I therefore find the application to lack merit and I dismiss it with costs.

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

H.I. ONG'UDI

JUDGE

In the presence of:-

Mr. Gachuba for Interested Parties

Mr. Waweru for Kariithi for Exparte Applicant

Njue CC