



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Miscellaneous Application 102 of 2002

REPUBLICAPPLICANT

V E R S U S

THE DISTRICT LAND ADJUDICATION &

SETTLEMENT OFFICER MAKUENI.....DEFENDANT

1. MAUNDU MULWA

2. BENJAMIN MAUNDU.....INTERESTED PARTIES

AND

1. MUTUNGI NZIOKA

2. KALUTI MWINZI.....EX PARTE

J U D G M E N T

1. The *Ex Parte* Applicants herein, MUTUNGI NZIOKA and KAZUTI MWINZI, obtained leave to apply for judicial review on 31st July 2002 upon application by chamber summons dated 18th June 2002. The substantive application was filed on 20th August 2002 by **notice of motion dated 18th August 2002**.
2. What is sought is an order of **certiorari** to “quash the cancellation of Mutungi Nzioka (and) Kaluti Mwinzi as proprietors of (parcel) No. IKALYONI/73 and (registration of) Maundu Mulwa as proprietor...done on 25th March 2002 by the District Adjudication Officer, Makueni and another officer”.
3. The notice of motion was accompanied by the statement of facts, verifying affidavit and supporting affidavit that had been filed together with the chamber summons for leave. To the verifying affidavit were exhibited a number of documents, including a letter dated 25th March 2002 addressed by one Grace K. Odinga (Mrs) (Settlement Officer 1) and one B. N. Kisilu (Land Adjudication Officer). The letter is addressed to Mutungi Nzioka, Kaluti Mwinzi, Maundu Mulwa and Benjamin Maundu.
4. The letter is headed “INVESTIGATION PLOT NO. 73, IKALYUNI ADJUDICATION SECTION and appears to contain the decision that is challenged in this application. The decision is in the last paragraph of the letter which states -

“In view of the foregoing we feel that the land in question plot No 73 would remain recorded in the names of Maundu Mulwa and Benjamin Maundu.”

5. The grounds for the application set out in the statement of facts include-

(i) That the cancellation breached rules of natural justice in that the *Ex Parte* Applicants were not accorded an opportunity to be heard.

(ii) That the Settlement Officer and the Land Adjudication Officer had no jurisdiction or acted in excess of jurisdiction as “the matter had (already) been dealt with by the Demarcation Officer under section 15 of the (Land) Adjudication Act”.

(iii) That the two officers were not duly gazetted adjudication officers and therefore could not purport to correct an error on the Adjudication Register. In any case, the “error to be corrected (does not) include removing a registered person from the (Adjudication) Register”.

(iv) That the 1st Interested Party was an Adjudication Officer in the Adjudication Department “and therefore influenced the cancellation or deregistration of the applicants”.

6. The Interested Parties filed grounds of opposition dated 14th April 2003. Those grounds are essentially technical in nature. The Respondent did not file any papers in response to the application.

7. The application was canvassed by way of written submissions. The *Ex Parte* Applicants’ submissions were filed on 13th April 2010 while those of the Interested Parties were filed on 18th April 2010. I have considered those submissions. No authorities were cited.

8. The material now before the court discloses the following history. Before the area in which the suit land is situated was declared an adjudication section there was a dispute between the *Ex Parte* Applicants and the Interested Parties which was referred to the Chief of the area and then to a panel of elders chaired by the District Officer of the area whose decision was eventually challenged in the High Court in **Machakos HCCC No. 87 of 1990**. All previous decisions on the matter were set aside and apparently the dispute referred to the Resident Magistrate’s Court, Machakos for hearing afresh. But no hearing ever took place, the matter before the Resident Magistrate’s Court being eventually marked as settled without any terms of settlement being recorded.

9. After the area was declared an adjudication section under the Land Adjudication Act the challenged decisions was reached. There is a procedure in the Land Adjudication Act for challenging any adjudication and demarcation decision, culminating in an appeal to the Minister. The *Ex Parte* Applicants do not appear to have availed themselves of that procedure, and no reasons have been given for not doing so.

10. The present application also appears to be based upon a misapprehension that the challenged decision cancelled the registration of the *Ex Parte* Applicants as proprietors of Plot No. 73. That does not appear to be so. The challenged decision was that the parcel of land “would remain recorded in the names of the Interested Parties. There was no cancellation of the names of the *Ex Parte* Applicants.

11. In the circumstances I find no merit in the notice of motion dated 18th August 2002, and the same is dismissed with costs to the Interested Parties. It is so ordered.

12. The delay in preparation of this judgment is deeply regretted. It was caused by my poor state of health the last few years. But thank God I have now fully regained my health.

DATED AT NAIROBI THIS 21ST DAY OF AUGUST 2012

H. P. G. WAWERU
JUDGE

COUNTERSIGNED AND DELIVERED AT MACHAKOS THIS

28TH DAY OF SEPTEMBER 2012

ASIKE-MAKHANDIA

.....
JUDGE