



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
MISCELLANEOUS CIVIL APPLICATION 158 OF 2004

IN THE MATTER OF AN APPLICATION BY JAMES KATIWA SILA FOR AN ORDER OF CERTIORARI

AND

IN THE MATTER OF THE LAND ADJUDICATION ACT, CAP 284

AND

IN THE MATTER OF AN APPEAL TO THE MINISTER FOR LANDS AND SETTLEMENT IN RESPECT OF LAND PARCEL NO. 381, ZAMBIA ADJUDICATION SECTION, KITUI DISTRICT, IN APPEAL CASE NO. 52 OF 2003

REPUBLICAPPLICANT

V E R S U S

**MINISTER FOR LANDS, HOUSING AND SETTLEMENT.....RESPONDENT
AND**

NDAMBUKI NTHOMEINTERESTED PARTY

EX PARTE.....JAMES KATIWA SILA

J U D G E M E N T

1. Upon leave granted on 7th October 2004, the *Ex Parte* Applicant filed the substantive application for judicial review by **notice of motion dated 25th October 2004**. The only order sought is **certiorari** to remove to this court and quash “the decision of the Minister for Lands, Housing and Settlement in respect of land parcel No. 381, Zambia Adjudication Section, in the Minister’s **Appeal Case No. 52 of 2003**”. The application was brought under **Order LIII, rule 3** of the old **Civil Procedure Rules** (the **Rules**).

2. The application is accompanied by the statement of facts and verifying affidavit filed together with the application for leave. There is also a supporting affidavit sworn by the *Ex Parte* Applicant. This document was not necessary under the Rules as the *Ex Parte* Applicant must rely upon the grounds set

out in the statement of facts filed together with the application for leave. But I note that the proceedings before the Tribunal and its decision, the proceedings before the District Magistrate's Court at Kitui in its **Civil Case No. 198 of 1972** and the proceedings of the appeal before the Minister and his decision have been annexed to this affidavit.

3. The grounds for the relief of **certiorari** sought, as set out in the aforesaid statement of facts, are as follows-

(i) That the Interested Party had no *locus standi* to participate in the proceedings before the Minister as "the land in issue according to him belonged to a third party named as Mr Kisyanga" (who was deceased).

(ii) That in any case the participation of the Interested Party in the proceedings was unlawful as he was not a legal administrator of the estate of the deceased Kisyanga.

(iii) That the Minister, as well as the Land Adjudication and Settlement Officer, "had no jurisdiction to entertain the dispute under the process established under the **Land Adjudication Act, Cap 284** as the dispute had already been heard and finalized by the Land Disputes Tribunal under the **Land Disputes Tribunals Act, No. 18 of 1990** as well as by a court of competent jurisdiction".

(iv) That the procedure adopted by the Minister was flawed as he conducted the appeal as if it was a trial by allowing witnesses to testify.

(v) That the Minister failed to give reasons for his decision.

4. The Interested Party opposed the application by **grounds of opposition dated 21st September 2006**. They are not serious grounds and are rendered thus-

(i) That the application is "misconceived, misplaced and bad in law".

(ii) That the application is an abuse of the process of the court.

(iii) That the application does not comply with the provisions and procedure laid down by Order LIII.

(iv) That the application is only meant to cause delay of finalization of this matter.

5. The Interested Party also filed a replying affidavit sworn by him on 22nd November 2006. Additional grounds of opposition emerging therefrom are as follows-

(i) That the decision of the Land Disputes Tribunal was "inconsequential as the matter was already under land adjudication and no consent had been given by the Land Adjudication Officer (for it) to be heard by the Tribunal".

(ii) That in respect to the proceedings before the District Magistrate's Court at Kitui in its Civil Case No 198 of 1972, the same were similarly "inconsequential" for the same reason.

(iii) That in any event it was not stated in the proceedings before the Tribunal and before the District Magistrate's Court what parcel of land was being litigated upon.

(iv) That the decision of the Minister was correct and proper, and within his mandate under the Land Adjudication Act.

6. By an order entered on 6th October 2009 the parties were directed to file written submissions. In the event only the *Ex Parte* Applicant filed submissions on 26th April 2010. I have considered those submissions, including the cases cited. I have also considered the Interested Party's grounds of opposition as set out above.

7. The grounds that the application is “misconceived, misplaced and bad in law”, or an abuse of the process of the court, or that it does not comply with the necessary rules of procedure, or that the application is meant only to delay the finalization of the dispute, have not been demonstrated to have any merit, and I reject the same. The grounds for the application must thus be considered upon their own merit. I will examine those grounds in turn.

Locus Standi of Interested Party

8. The Land Adjudication Act was enacted -

“to provide for the ascertainment and recording of rights and interests in Trust land, and for purposes connected therewith and ...incidental thereto.” See the head-note of the Act.

“Interest” in relation to land is defined in section 2 of the Act as including

“absolute ownership of the land and any right or interest in or over the land which is capable of being registered under the Registered Land Act”.

The process of land adjudication under the Land Adjudication Act is thus a much broader process than merely establishing title to land. It is an all-inclusive process designed to ascertain absolute ownership of Trust land and other rights prior to conferring title under the Registered Land Act, Cap 300.

9. Such a process cannot be confined to legalistic requirements such as letters of administration. In any event, the Interested Party did not make claim on behalf of the estate of his late brother Kisyanga but on his own behalf. The complaint that he did not have *locus standi* for want of letters of administration is thus without merit.

Res Judicata

10. We have seen that the process of land adjudication under the Land Adjudication Act is a very broad one whose main purpose is to ascertain absolute ownership of trust land for purposes of issuance of title under the Registered Land Act.

11. The *Ex Parte* Applicant has submitted that the dispute between him and the Interested Party had already been adjudicated upon and decided by a competent Tribunal under the Land Disputes Tribunal. It is apparent that the said dispute involved title to land. The jurisdiction of the Tribunal under the Land Disputes Tribunals Act, No 18 of 1990 was very limited. Under section 3(1) of that Act that jurisdiction was limited to cases of a civil nature involving a dispute as to the division of, or the determination of boundaries to, land, including land held in commons; a claim to occupy or work land; or trespass to land. The Tribunal thus did not have jurisdiction to adjudicate over title to land. The Land Disputes Tribunal in Land Case No. 6 of 2000 could not have competently adjudicated over the dispute involving ownership of land between the *Ex Parte* Applicant and the Interested Party.

11. With regard to Kitui District Magistrate’s Civil Case No. 198 of 1972, the exhibited proceedings do not indicate the nature of the dispute between the parties or the parcel of land involved (if any). Going by the parties to the suit, the Interested Party does not appear to have been a party in that suit. In any event, the case was not heard upon its merit. It was apparently dismissed for non-attendance by the Plaintiff.

Proceedings before the Minister

Appeal to the Minister is provided for in **section 29** of the Land Adjudication Act. **Subsections (1) and (2)** of that **section** provide -

“29. (1) Any person who is aggrieved by the determination of an objection under section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by -

- (a) **delivering to the Minister an appeal in writing specifying the grounds of appeal; and**
- (b) **sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just, and the order shall be final.**
- (2) **The Minister shall cause copies of the order to be sent to the Director of Land Adjudication and to the Chief Land Registrar.”**

12. It is thus clear that no particular procedure for hearing of appeals is prescribed for the Minister. There is no requirement under the Act that the appeal is to be heard by the method and process prescribed under the **Civil Procedure Act** and the **Rules** made thereunder. Similarly, there is no such requirement under the Land Adjudication Regulations made under section 35 of the Act, regulation 4 of which deals with appeals to the Minister. Sub-regulation (4) of that regulation provides-

“(4) Subject to the leave of the Minister being first obtained the appellant or any other party to an appeal may attend before the Minister either in person or by duly authorized agent, and shall be entitled to call witnesses.”

13. The complaint that the procedure adopted by the Minister was flawed by allowing witnesses to testify in thus without merit.

Minister’s failure to give reasons

There is no requirement under either the Land Adjudication Act or the Land Adjudication Regulations for the Minister to give reasons for his decision. **Section 29(1)** of the Act simply provides that-

“... the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final”.

14. This law anticipated that the Minister may not necessarily be a trained lawyer with the necessary skills to write a considered “judgment” or “ruling”. His function in the appeal would be quasi-judicial. He was not in the position of a judge hearing and determining an appeal under the Civil Procedure Act and Rules. There is thus no substance in this complaint as well.

15. Having examined all the grounds upon which the order of **certiorari** is sought, I do not find any grounds upon which the appeal proceedings before the Minister could be faulted. It must be noted here that judicial review does not deal with the merits of the impugned decision, but rather with the process by which that decision was reached. I find no fault with the conduct of the appeal by the Minister.

16. In the event the notice of motion dated 25th October 2004 is refused and dismissed with costs to the Interested Party. It is so ordered.

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

DATED AT NAIROBI THIS 9TH DAY OF AUGUST 2012

H P G WAWERU
JUDGE

PRONOUNCED IN OPEN COURT AT MACHAKOS THIS 28TH DAY OF SEPTEMBER 2012.

ASIKE-MAKHANDIA
.....
JUDGE