



REPUBLIC OF KENYA

High Court at Machakos

Miscellaneous Application 279 of 2006

REPUBLIC.....APPLICANT

VERSUS

KITUI DISTRICT LAND ADJUDICATION AND SETTLEMENT
OFFICER.....RESPONDENT

AND

BENARD MALONZA MUSYA & 45 OTHERS.....INTERESTED PARTIES

AND

1. DANIEL MUSILI NYEKI
2. JOHN KIMOTHO MULATYA
3. PETER BONIFACE KILONZI MULI
4. JOSEPH MUSYOKA KIMANZI
5. DAMARIS MUSALI MALONZA.....EX-PARTE APPLICANTS

R U L I N G

Before me is a **Notice of Motion** dated 11th January 2007 filed by five persons **Daniel Musili Nyeki, John Kimotho Mulatya, Peter Boniface Kilonzo Muli, Joseph Musyoka Kimanzi** and **Damaris Musali Malonza**. The respondent is the Kitui District Land Adjudication and Settlement Officer. Bernard Malonza Musya & 45 Others are listed as interested parties. It is an application brought under **Order LIII Rule 3** of the **Civil Procedure Rules**. It seeks *certiorari* orders to issue quashing the decision of the Kitui District Land Adjudication and Settlement Officer in about 43 land matters which decision was made on 4/11/2006. It also seeks an order of *mandamus* to enforce decisions in Kitui **DMCC L 52 of 1981, RMCC L 11 of 1986**, and subsequent decision of the High Court in **Nairobi HC Misc. Application No. 701 of 1987, HC Misc. 340 of 1992, and HC Misc. 844 of 1992**. It also seeks stay orders pending determination of the application, and costs. Several copies of documents were filed with the affidavit in support of the Chamber Summons for leave. These include the handwritten proceedings before the Land Adjudication and Settlement Officer, the decisions in the magistrate's court, as well the decisions in the High Court.

The *ex-parte* applicants filed their written submissions through counsel **Sila & Company Advocates** on 11th January 2012. The interested parties through their counsel **P.M. Mutuku & Company Advocates** filed their written submissions on 13th March 2012.

The respondents did not defend themselves. They also did not file submissions.

At the hearing of the application, **Mr Sila** for the applicants highlighted the submissions on behalf of his clients. **Mr Muema** for the interested parties did the same on behalf of his clients.

I have considered the application, documents filed and the submissions, both written and oral.

I will say straight away that prayer 3 of the application for the leave to operate as a stay has been spent. It is not a substantive prayer for determination now in the main application. I will therefore not make a determination on it.

Prayer 1 for *certiorari* is not grantable. This is because there are laid down procedures under the **section 29** of the **Land Adjudication Act (Cap 284)** for appealing from the decisions, arising from the process of land registration. The applicants have not informed this court that they have complied with those procedures, and what the outcome has been. In my view, the judicial review court should not be used where there are specific legal remedies provided, unless the applicant convinces the judicial review court that those existing legal processes are adequate. The applicants have not done so. They are therefore in the wrong forum.

In my view, prayer 2 requesting for *mandamus* also cannot be granted by this court. It is trite that *mandamus* orders are sought or granted to remedy failure to act in accordance with the law. *Mandamus* is an order compelling a public officer to comply with the law. In **Mwau –vs- Principal Immigration Officer (1985) KLR 72** the High Court held, *inter alia*, that:-

“3. The order of mandamus will not be granted against one who is an inferior or ministerial officer, bound to obey the orders of a competent authority, to compel him to do something which is part of his duty in that capacity. The courts are reluctant to issue a writ of mandamus unless some specific act or thing which the law requires to be done has been omitted.”

The underlining is mine. The orders sought to be enforced by mandamus herein are court orders. In my view, the subordinate courts at **Kitui** and the High Court which made orders in **Kitui DMCC L 52 of 1981, RMCC L 11 of 1986**, and subsequent decisions of the High Court in **Nairobi HC Misc. Application No. 701 of 1987, HC Misc. 340 of 1992** and **HC Misc. 844 of 1992** had full authority and powers to enforce their decisions. They could compel the **Kitui** District Land Adjudication and Settlement Officer to comply with their decisions. If mandamus orders were needed and necessary they should have been sought in those specific cases. Same cannot be done through filing separate proceedings to enforce the court orders therein. In my view these proceedings are in the wrong forum.

In the results, I find that the application for judicial review orders herein has no merits. I was misadvised. I dismiss the same, with costs to the interested parties.

Dated and delivered at Machakos this **29th** day of **November** 2012.

George Dulu

Judge

In the presence of:

N/A for parties

Daniel Musili present in person

Collins – Court clerk