



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

HIGH COURT JUDICIAL REVIEW MISC. NO. 75 OF 2008

M’MUTEA MURURU MIRITHU *EX PARTE*

APPLICANT

VERSUS

THE ERSTWHILE MERU NORTH DISTRICT LAND ADJUDICATION AND SETTLEMENT

OFFICER.....1ST RESPONDENT

SENIOR RESIDENT MAGISTRATE TIGANIA LAW

COURTS2ND RESPONDENT

ATTORNEY

GENERAL.....3RD

RESPONDENT

AND

FRANCIS NCEBERE

M’ARITHO..... INTERESTED

PARTY

JUDGMENT

The interested party Francis Ncebere M’Aritho (Francis) lodged an objection number 922 of 2002 against the *ex parte* applicant M’Mutea Mururu Mirithu (Mirithu) over parcel number 3359 *Athinga/Athanje*. The objection was heard by the adjudication officer under Cap 283 Land Consolidation Act. The adjudication officer sitting alone made a decision on 12th March 2008 ordering that parcel number 3359 do revert back to Francis. That decision is the subject of this judicial review matter. Murithu seeks that an order of *certiorari* may issue to bring to this court for quashing that decision of the adjudication officer. He also seeks that a prohibition order would issue to prohibit the adjudication officer from replacing the name of Murithu with the name of Francis in the register of parcel No. 3359. In his affidavit Mirithu stated that he is the registered owner of that parcel which he has extensively developed. That the objection number 922 of 2002 was heard by the adjudication officer who then referred it to Njuri Ncheke counsel of elders. The said elders, according to him, did not arbitrate on the dispute between him and Francis. Despite that position, that the adjudication officer proceeded to deliver decision in favour of Francis. That following that decision, the adjudication officer now intends to cancel the name of Mirithu and replace it with that

of Francis on the title. In support of the case of Mirithu, learned counsel Mr. Cal Peters Mbaabu submitted that the adjudication officer having heard the dispute under Cap 283 should have adhered to the provisions of section 9 and 11 of that Act. That by virtue of those sections, he ought to have appointed a committee of 25 members to determine the issue. The matter was opposed by Francis. He alleged that he is the owner of the subject land. Francis referred to a case that he has now filed before the Tigania Senior Resident Magistrate Court being Civil Case No. 80 of 2008. In that case, Francis is seeking determination that the subject land belongs to him. He further seeks an order of eviction of Mirithu. It is necessary to refer to the pertinent sections of Cap 283. Section 9 (1) and (2) of that Act provides:-

“ 9 (1) The Adjudication Officer within whose district an adjudication section is situated shall appoint a committee of each adjudication section from amongst persons resident in the adjudication section and each committee shall consist of not less than twenty-five members.

(2) The Adjudication Officer shall appoint an executive officer for each committee within the district and such executive officer shall attend, and may speak, at any meeting of the committee, but shall not vote.”

The committee mentioned in that above section is mandated by section 11 (1) to hear disputes. That section provides as follows:-

“11 (1) The committee appointed for an adjudication section shall adjudicate upon and determine in accordance with African customary law the claim of any individual person to any right or interest in any land within the adjudication section.”

Considering the provisions of those sections, it is clear that the adjudication officer failed to follow the law and as a consequence, his decision is illegal. His decision which he reached alone is therefore amenable to the orders of certiorari that are sought in this case. The order of prohibition sought by Mirithu is in my view misplaced because once the decision is quashed, there will be no need to prohibit the adjudication officer. I have relied on the case **Kenya National Examinations Counsel vs. Republic** Civil Appeal No. 266 of 1996 where it was stated:-

“Only an order of certiorari can quash a decision already made and an order of certiorari will issue if the decision is made without or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons.”

I therefore make the following orders:-

- 1. This court does hereby issue an order of certiorari removing to this court the decision/finding/award by the adjudication officer Athinga/Athanja Adjudication section in objection number 992 of 2002 made on 12th March 2003 in respect of parcel number 3359 situated in Athinga/Athanja Adjudication section and the same is hereby quashed.***
- 2. Since the mistake that has led to the quashing of that decision can only be attributed to the adjudication officer, I order that each party do bear their own costs.***

Dated, signed and delivered at Meru this 18th day of May 2011.

**MARY KASANGO
JUDGE**

