



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS

Civil Miscellaneous Application 131 of 2004

REPUBLICAPPLICANT

VERSUS

SPECIAL DISTRICT COMMISSIONER, KITUI.....RESPONDENT

JUSTUS M. MUWIWA.....INTERESTED PARTY
WAMBUA MULILI.....EXPARTE APPLICANT

J U D G E M E N T

The Ex-Parte Applicant herein, **Wambua Mulili** (hereinafter called the **Applicant**) has sought by notice of motion dated 7th October 2004 **judicial review** of an “**undated judgment delivered on 24th May 2004 by the Special District Commissioner, Kitui**” (under “**powers conferred by section 29(4) of the Land Adjudication Act**” as delegated to him by the Minister vide **Legal Notice No. 73 of 28th April 1978**) in **Land Appeal Case No. 197 of 1987 (Wambua Mulili -vs- Justus Malombe Muviwa)**.

By the said judgment, the Applicant’s appeal to the Minister was dismissed, and the decision of the Land Adjudication Officer, Kitui upheld. That decision, dated 4th June 1980, was that the “land in dispute” was awarded to the plaintiff, **Justus Malombe Muviwa** (the Interested Party herein).

The reliefs sought are an order of *certiorari*, to remove to this court for purposes of quashing the judgment of the Special District Commissioner, and an order of *mandamus* directing the Special District Commissioner to “vacate”, “retract” and “withdraw” his said judgment.

The grounds for seeking judicial review as set out in the Statutory Statement and Verifying Affidavit are;-

1. That the judgment was “**contrary to grounds of appeal.**”
2. That the judgment was contrary to evidence adduced before the Adjudication Officer.
3. That the judgment was made “**without analyzing the evidence and without giving reasons for rejecting the appeal**”.
4. That the Special District Commissioner failed to note and consider the decision of the Land Adjudication Officer.

5. That the judgment is “**biased and not based on any facts or evidence**” before the Special District Commissioner.

6. That the Special District Commissioner exceeded his powers and acted injudiciously and contrary to rules of natural justice.

I have read the statement of facts, verifying affidavit and replying affidavit. I have also read the proceedings and decisions of both the Adjudication Officer and the Special District Commissioner (acting in delegation by the Minister). I have also considered the written submissions filed on behalf of the Applicant, the Interested Party and the Respondent, including the cases cited.

It is useful to realize that the appellate decision of the Minister under section 29 of the Land Adjudication Act, Cap 284 (the **Act**) is the culmination of a lengthy dispute resolution process under the Act. In the present case, it was the 4th decision that had been passed against the Applicant on the disputed parcel of land. First, there was the decision of the Lands Adjudication Committee. The Applicant then took the matter before the Arbitration Board. The Board’s decision was against him as it affirmed the Adjudication Committee’s decision.

Not being satisfied with the Arbitration Board’s decision, the Applicant lodged an objection before the Adjudication Officer, whose decision affirmed the previous two decisions. The Applicant then appealed to the Minister under section 29 of the Act.

I have already set out elsewhere in this judgment the grounds upon which judicial review is sought. Those grounds boil down to the following complaints:-

1. That the Special District Commissioner exceeded his powers.
2. That he also acted contrary to rules of natural justice.
3. That the judgment was made without analyzing the available evidence, and without giving reasons for rejecting the appeal.

There cannot be any dispute that this court would be duty bound to intervene were it shown that the proceedings before the Special District Commissioner were biased and contrary to rules of natural Justice, or that the Special District Commissioner acted without jurisdiction, or exceeded his powers. What was the position here?

The Special District Commissioner, in hearing the appeal, was performing the function of the Minister as duly delegated to him. The function of the Minister under the Act was to “**determine the appeal and make such order thereon as he thinks just.**” Did the Special District Commissioner exceed this mandate?

The Special District Commissioner, after hearing the parties determined the appeal as follows:-

“The Appellant claims that the portion in dispute was part of land parcel No. 49. He claims that he respondent was awarded the land by the adjudication committee because it never came from the area. The respondent states that the land was acquired by his father and grandfather in 1946. He further states that he has been a warded the land in all previous cases.”

The Special District Commissioner then rendered his decision as follows:-

“Appeal dismissed. Previous rulings (objection, arbitration board and adjudication committee) upheld. Parcel No. 757 to remain in the names of Justus Malombe Muviwa.”

By that decision the Special District Commissioner clearly determined the appeal and made such order as he thought just. He did not exceed the Minister’s jurisdiction as donated by the Act. He acted within that mandate.

As can be seen from the proceedings before the Special District Commissioner, he accorded both parties before him an opportunity to present their case personally and by witnesses. Both presented their cases and were cross-examined by the opposite party. The Applicant did not call any witness; the Interested Party called one. I cannot see the basis for the complaint of bias.

The other complaint is that the Special District Commissioner did not analyze the evidence placed before the Adjudication Officer or give reasons for his decision. This complaint would have been germane in a normal appeal under **Order 41** of the **Civil Procedure Rules**. But the appeal before the Minister was not such appeal. There is no requirement under the Land Adjudication Act that the usual court rules of procedure and normal court protocols in dealing with civil appeals do apply to an appeal to the Minister under section 29 of the Act. As already seen, all the Minister is required to do under the Act is to **“determine the appeal and make such order thereon as he thinks just.”** The Special District Commissioner did just that. He was not required under the law to render an analysis of the available evidence and give reasons for his judgment.

In the result, I find no merit in this judicial review application. It is hereby dismissed with costs to the Interested Party and to the Respondent. It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MACHAKOS THIS 23RD DAY OF APRIL 2010

H.P.G. WAWERU
JUDGE