



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS

Miscellaneous Application 9 of 2005

REPUBLIC APPLICANT

-VS-

THE DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT.....1ST RESPONDENT

THE LAND ADJUDICATION BOARD AND

SETTLEMENT OFFICER, MAKUENI DISTRICT..... 2ND RESPONDENT

THE CHIEF LAND REGISTRAR 3RD RESPONDENT

PHILIP KILONZO MOKI INTERESTED PARTY

ROBERT MULI MATOLO.....EX PARTE APPLICANT

AND

IN THE MATTER OF THE LAND ADJUDICATION ACT, CAP 284 LAWS OF KENYA

AND

IN THE MATTER OF OBJECTION CASE NO 352, KIVANI ADJUDICATION SECTION

R U L I N G

This is an application, by notice of motion dated 31st January 2005, for judicial review. Various reliefs are sought as follows:-

- 1. “An order of certiorari...to bring to this court for purposes of being quashed the decision, order, findings and/or directive of the 1st Respondent in Objection Case No. 352 contained in his letter dated 27.09.2004 referring to land parcel No. 803, Kivani Adjudication Section, for re-adjudication by 2nd Respondent in terms of illegal clan proceedings of 1991.**
- 2. An order of prohibition...directed to the 2nd Respondent prohibiting him from executing the decision, order or directive of the 1st Respondent contained in his letter dated 27.09.2004 and/or the ruling by the Aombe Clan allegedly made on 27.02.1991.**

3. **An order of prohibition...directed to the 2nd Respondent prohibiting him from entering into land parcel No. 803, Kivani Adjudication Section, on 25.01.2005 or at all, or in any other manner interfering with the boundaries thereof, or any adjudication records which touch on the said suit premises.**
4. **An order of prohibition...directed to the 3rd Respondent prohibiting him from registering the whole of land parcel No. 803 in favour of the 4th Respondent alone as the absolute registered owner.**
5. **An order of mandamus...directed to the 3rd Respondent compelling him to register land parcel No. 803 in favour of the Applicant and the 4th Respondent in the ratio of 2 acres and 0.09 acres respectively.**
6.
7.

Leave to institute the proceedings was obtained on 25th January 2005 upon chamber summons dated 24th January 2005.

It seems to me that reliefs 3, 4 and 5 raise issues that cannot be properly adjudicated in these present proceedings. They ought to be raised in an ordinary suit commenced by way of plaint. Only reliefs 1 and 2 can be properly dealt with in this judicial review.

On 1st of December 2009 an order was made, in effect, for the judicial review to be heard by way of written submissions. When the order was made, there was appearance only for the *Ex Parte* Applicant. There was no appearance for the Interested Party or the Respondents. There is no evidence that the order for the matter to be heard by way of written submissions was ever served upon the Interested Party and the Respondents.

It is thus not surprising that only the *Ex Parte* Applicant has filed written submissions. No other party has filed them.

On 8th March 2010, the court was informed that the Interested Party had died. It was not indicated when he died. Needless to say, an Interested Party in judicial review proceedings is a necessary party, as any order made may affect him. In the present case, an order made herein may no doubt affect the estate of the deceased Interested Party. On the aforesaid date, that is 8th March 2010, there was also no appearance for the Respondents.

To render a decision in this matter upon the submissions of only the *Ex Parte* Applicant, is to decide the case without the Interested Party and the Respondents having been accorded an opportunity to be heard. That would be a breach of a cardinal principle of the **rules of natural justice**. It would be untenable.

I must therefore decline to write a judgment at this stage. I direct that the notice of motion dated 31st

January 2005 be fixed for hearing at the registry after the issue of possible substitution of someone in place of the deceased Interested Party has been looked into. Costs shall in the cause. It is so ordered.

DATED AND SIGNED THIS 12TH DAY OF MAY 2010

H.P.G. WAWERU

JUDGE

DELIVERED THIS 14TH DAY OF MAY 2010