



REPUBLIC OF KENYA

IN THE HIGH COURT

AT EMBU

Criminal Application 29 of 2007

NJAGI M'TETU.....1ST APPLICANT
AGNES MUTURI.....2ND APPLICANT

VERSUS

HON ATTORNEY GENERAL1ST RESPONDENT
HON. MINISTER FOR LANDS.....2ND RESPONDENT

J U D G M E N T

The parties herein have been litigating over the property in question since 1964. The matter was heard by the Land Adjudication Committee. The scene was even visited in July 1974. The Adjudication Committee on 12/6/1974 awarded the whole of the disputed land to the defendant one Njeru M'tetu. The 2nd ex-parte applicant took over the litigation after the death of the then defendant. The plaintiff who lost the case filed an objection before the Arbitration Board sitting at Mbita. The Board awarded the land to MBUGI NTHARE.

The matter then went to the next available forum and on 13/5/1991 another decision was made where the objection was ***“partly allowed”*** and the late Maria Gakii Nyaga was given a life interest in the said plot. She died later and was buried there. The matter did not end there and an Appeal was filed before the District Commissioner Mbeere who heard the Appeal and rendered his decision dated 22/9/2006. That decision was to the effect that plot No. 1771 be registered in the name of Peter Nthiga who was the grandson of the plaintiff one Nyaga Ngeki. Undeterred, the party who lost namely Njagi Njeru M'tetu and one Agnes Muturi Njeru moved to this court and filed the motion for Judicial Review. It is instructive to note that the matter made a full circle from Siakago Court where it was heard way back in 1964 back to this court in 2007 - i.e after a span of 43 years. The ex-parte applicants now want this court to quash the decision of the District Commissioner which was made

on 22/9/2006. They also seek orders of prohibition to restrain the Minister of Lands or Director of Adjudication or Land Registrar from implementing the minister's decisions. They are also seeking orders of mandamus to compel the said officers to register the plot in question in their names after deleting any other registration in respect of the said land. The application is premised on 12 grounds on its face and supported by a long affidavit and statement of facts.

The same is opposed vide a replying affidavit dated 18/5/2007 sworn by the interested party. I have considered the application and the grounds thereon and the rival affidavits. I have also carefully considered the contents of the written submissions filed by both counsel. I have painstakingly gone through the proceedings of the various panels or tribunals that deliberated over this matter.

What I would like to say however is that this Judicial Review application is only in respect of the District Commissioner's decision dated 26/9/2006. This is so because the other decisions were made years ago and Judicial Review can only apply to a decision that was made not more than 6 months prior to the filing of the application for leave. Mr Mugo's attempt to sneak in faults made by the Adjudication Committee or the Arbitration Board must therefore be resisted strongly. Section 7 and Section 12 of the Land Adjudication Act are not therefore relevant for purposes of this application.

I shall therefore strictly deal with Section 29 of the Land Adjudication Act which deals with the Appeals to the minister. The District Commissioner in entertaining Appeals under Section 29 of the Land Adjudication Act does so under the powers delegated to him by the minister. This was the power he was exercising when he entertained the Appeal and rendered the decision that is now the subject of these Judicial Review Proceedings.

Section 29 does not itself prescribe the procedure to be adopted at the hearing of the Appeal. It only provides:-

“ Any person who is aggrieved by the determination of an objection under Section 26 of this Act may, within 60 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.

It does not therefore provide for the calling of the witnesses etc. This Section is nonetheless complemented by Regulation 4 (4) of the Land Adjudication Regulations which provides

“ 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.”

This provision provides for a duly authorized agent and that would cover the parties who appeared to represent their dead parents. The issue of locus standi or lack of grant of letters of administration does not arise.

The proceedings before the D.C do not show if his leave was sought first in order for the parties to appear. What that regulation presupposes is that the appearance of the parties shall be at the discretion of the minister (D.C). He cannot therefore be faulted if he declines to allow the parties to appear, or if all intended witnesses do not testify. An appeal is not a re-opening of the case even on issues that have not been appealed against. There is also no indication in the proceedings before the D.C that there were other persons who wanted to testify and they were refused. The proceedings clearly show the witnesses who were present and who testified.

A look at the proceedings would not show on what the witnesses said, what was recorded and what was left out. That would only amount to speculation. Indeed, the proceedings show clearly the questions that were asked and the answers given.

I do not see any misconduct that can be imputed on the District Commissioner.

Judicial Review is not about whether the Tribunal arrived at the right or desired decision. It is about giving the parties a fair hearing and observing rules of natural justice. It is about how the ultimate decision was arrived at.

Having considered all the material placed before me, I am satisfied that the District Commissioner in hearing the parties adhered to the law and procedure as mandated by the Adjudication Act. There were no rules of natural justice that were flouted. The parties were properly heard and a decision made on the appeal. They may not have been happy with the end result, but that does not call for the quashing of the said decision.

My considered view is that this notice of motion fails to meet the threshold set for Judicial Review matters and the same must therefore fail. The same is dismissed with costs to the interested

parties.

**W. KARANJA
JUDGE**

Delivered, dated and signed at Embu this 12th day of May 2010

In presence of:-Mr. Mugo for ex-parte Applicant