



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU**

Judicial Review 58 of 2009

**IN THE MATTER OF: AN APPLICATION FOR A JUDICIAL
REVIEW WRIT OF CERTIORARI**

**IN THE MATTER OF: SECTIONS 8 AND 9 OF THE LAW REFORM ACT, CAP 26, LAWS OF
KENYA AND ORDER LII RULE 3 (1) OF THE CIVIL PROCEDURE RULES**

AND

**IN THE MATTER OF: SECTION 11 (1) AND 26 (1) OF THE LAND CONSOLIDATION ACT, CAP 283, LAWS OF
KENYA AND SECTIONS 77 (9) AND 82 (2) AND (3) OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF: PROCEEDINGS, JUDGMENT/ORDER DATED 29/4/2009 BETWEEN THE INTERESTED PARTY AND
EXPARTE APPLICANT OVER OWNERSHIP OF A PARCLE OF LAND NUMBER 4295, SITUATED AT MIKINDURI
MARKET ANTUAMBURI ADJUDICATON SECTION WITHIN TIGANIA EAST DISTRICT.**

REPUBLIC APPLICANT

VERSUS

**TIGANIA EAST DISTRICT LAND ADJUDICATION
AND SETTLEMENT OFFICER 1ST RESPONDENT
ATTORNEY GENERAL 2ND RESPONDENT**

AND

GERVASIO MUGAMBI THITURA INTERESTED PARTY

FLORENCE NKIO PHILIP..... EX PARTE

JUDGMENT

The *ex parte* applicant on 28th August 2009 was granted leave to file for orders of *certiorari* to quash the decision of the first respondent in objection number 17 of 2008. On obtaining that leave, the *ex parte* applicant filed a Notice of Motion dated 27th August 2009. The *ex parte* applicant stated in her verifying affidavit that she is the lawful proprietor of land parcel number 4295 situated at Mikinduri Market in Antuamburi Adjudication Section within Tigania East District. On that land, she stated that she has constructed a semi permanent house which is rented out to a third party. Further that she has even buried the remains of her late father on that land. That in 2008 the interested party filed an objection number 17 of 2008 objecting against her ownership of that suit property. The first respondent proceeded to hear that

objection without involving the land adjudication committee of Antuamburi Adjudication Section. Further that the first respondent denied a hearing to the ex parte applicant's 3 witnesses. It is on that basis that the ex parte applicant seeks the quashing of the decision of the Adjudication Officer, the first respondent. The objection which was considered by the first respondent was filed as provided under Section 26 (1) of the Land Consolidation Act Cap 283. That section in part provides as follows:-

“Any person named in or affected by the adjudication register who considers such register to be accurate or incomplete in any respect, or who is aggrieved by the allocation of land as entered in the adjudication register, may, within sixty days of that date upon which the notice Inform the Adjudication Officer stating the grounds of his objection, and the Adjudication Officer shall consider the matter with the committee and may dismiss the objection or if he thinks the objection to be varied, order the committee to take such action as may be necessary to rectify the matter.....”

The composition of that committee mentioned in Section 26 (1) is as seen in Section 9 (1) Cap 283. That Section provides as follows:-

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

Looking at the scantily typed proceedings, the Adjudication Officer failed to follow the statutory provisions as stated above in reaching his decision. If indeed he was assisted by a committee as provided by Section 9 (1), then his proceedings did not reflect the same. Since this court can only be guided by those proceedings, the court can only assume that the adjudication officer did not involve the committee.

Accordingly, the prayer that is sought by the ex parte applicant is merited. I grant the following orders:-

- 1. An order of certiorari is hereby issued calling to this court and quashing the proceedings and judgment dated 29th April 2009 made by the first respondent in objection number 17 of 2008 between the interested party and the ex parte applicant over parcel number 4295 situated at Mikinduri Market in Antuamburi Adjudication Section within Tigania East District.***
- 2. Because the failure of the Adjudication Officer cannot be blamed on any party in this action, I order that the objection number 17 of 2008 be heard afresh as provided under the law with the aid of a committee.***
- 3. Each party shall bear their own costs because the failure of the adjudication officer cannot be blamed on any party.***

Dated and delivered at Meru this 4th day of June 2010.

MARY KASANGO
JUDGE