



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

Miscellaneous Application 145 of 2009

**IN THE MATTER OF AN APPLICATION BY ONESMUS MUTISYA MULEE FOR LEAVE TO
APPLY FOR JUDICIAL REVIEW**

AND

**IN THE MATTER OF THE DECISION BY THE DISTRICT LAND ADJUDICATION AND
SETTLEMENT OFFICE MACHAKOS**

BETWEEN

REPUBLIC APPLICANT

VERSUS

THE DISTRICT LAND ADJUDICATION AND

SETTLEMENT OFFICE MACHAKOS 1ST RESPONDENT

THE DIRECTOR OF LAND AND SETTLEMENT 2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 3RD RESPONDENT

THE CHIEF LAND REGISTRAR 4TH RESPONDENT

AND

TITUS MWANIA VUVA 1ST INTERESTED PARTY

JOHNSON MUTUA MULI 2ND INTERESTED PARTY

JOSEPH MUASA NDONYE 3RD INTERESTED PARTY

JONES MUNYAO KIENGE 4TH INTERESTED PARTY

ONESMUS MUTISYA MULEE EX-PARTE APPLICANT

RULING

1. The Application dated 28/4/2009 seeks leave to apply for orders of certiorari and prohibition regarding **“the decision and directive of the District Land Adjudication Officer, Machakos District, to carry out an illegal demarcation of an access road through all that parcel of land known as plot No. 3656 Kaewa Adjudication Section”**.
2. In his Verifying Affidavit, the Applicant states that he is the registered proprietor of the above plot and at the closure of the register there was only **“one access road passing through the said road (sic) and no disputes had been registered thereof”**. That the Land Adjudication Officer without lawful cause directed that another access road be created and yet he lacked the mandate to do so.
3. I have seen the correspondences attached to what is called the Supporting Affidavit and I deem it fit to summarise their content as follows;
 - i. the Land Adjudication Officer, Yatta District in a letter dated 15/9/2008 and addressed **“to whom it may concern”** stated that plot NO.3656 aforesaid is **“recorded”** in the name of the present Applicant but registration had not been done as **“the section is still under Land Adjudication Cap 284”**.
 - ii. Letter dated 10/1/2007 by the Demarcation Officer Kaewa Adjudication Section addressed to the persons named herein as Interested Parties stating the position of the access road i.e. **“boundary between (Plot) No. 1992 and 3655, 3659, 3660 and 3661”**.
 - iii. Letter dated 18/5/2007 addressed to the Director, Land Adjudication Department where the Applicant sought re-surveying of the land to identify the exact position of the access road.
 - iv. Letter dated 4/6/2007 by the District Land Adjudication Officer requesting the Applicant to visit his office on 13/6/2007 at 9.00 a.m. and explain his complaint.
 - v. Letter dated 16/9/2008 from the Director of Land Adjudication & Settlement advising the District Land Adjudication Officer that the issue of the access road can only be addressed once the area had been registered and the **“status as at the end of the objection period must be maintained”**.
 - vi. Letter dated 22/9/2008 in the same terms as (v) above and stating further that the area chief had no authority to make amendments to the land **“on the ground”**.
 - vii. Letter dated 4/11/2008 by the Director Land Adjudication Department stating that the Applicant had conspired with **“the demarcation officer for P/No.3656 to misplot (sic) the road of access which did not augur well with residents and for him to see the District Land Adjudication Officer for further information”**.
4. From the above narration, it is unclear to me what decision or directive is being challenged. In none of the letters I have reproduced above has the 1st or 2nd Respondent directed **“the re-demarcating (of) an access road through land parcel No.3656 Kaewa Adjudication Section.”** What is clear from the correspondence exchanged is that in fact no decision had yet been taken although parties had made their positions known including the 2nd Respondent who initially supported the Applicant but later withdrew that support.
5. Judicial review orders attach to a specific decision, order or proceeding. In this case I see no **“decision”** or **“directive”** as stated by the Applicant to which any order of certiorari or prohibition can attach. Should the Respondents make such a decision or issue such a directive as is feared, then the Applicant can return to this court. He has been asked to see the Land Adjudication Officer and instead of doing so and obtaining that decision, he has rushed to this court. He is merely fearful.
6. As it is the Application is without merit and is dismissed without any order as to costs.
7. Orders accordingly.

Dated and delivered at Machakos this **28th** day of **May** 2009.

ISAAC LENAOLA

JUDGE

In presence of: **Mr Makau h/b for Mr Mung'atta for Applicant**

ISAAC LENAOLA

JUDGE