



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

MISCELLANEOUS CIVIL CASE 235 OF 2006

LEONARD KAMENCU KAIRIAMA.....APPLICANT

VERSUS

**LAND ADJUDICATION OFFICER MERU NORTH
DISTRICT.....RESPONDENT**

JOANINA KAREGI.....1ST INTERESTED PARTY

PATRICK MURUNGI.....2ND INTERESTED PARTY

BERNARD MAORWE KITHARIA.....3RD INTERESTED PARTY.

JUDICIAL REVIEW

- v An adjudication Officer has no jurisdiction to hear and determine a matter under section 26 of the Land Consolidation Act, (Cap 283, Laws of Kenya).
- v A person who has not been issued with a Grant of Letters of Administration has no Locus Standi to bring objection proceedings under Land Consolidation Act or other Law.
- v An Adjudication Officer has no jurisdiction to determine a matter barred by the Limitation of Actions Act (Cap 22 Laws of Kenya s.4)
 - v Orders of Certiorari will issue to quash a decision made without jurisdiction.
- v Orders of Prohibition will issue to an inferior court or authority to prohibit or forbid inferior court or authority from continuing with proceedings or implementing an unlawful decision.

RULING

By a Notice of Motion dated and filed on 21st December 2006, the ex parte applicant, Leonard Kamencu Kairiama sought:-

- (1) An order of Certiorari to remove to this court the decision of the Land Adjudication Officer Meru North District made on 13th July 2006 in Objection No. 684 of 2006 Kiguchwa Adjudication Section and quash the same and other orders made therein without jurisdiction and against the law of the land.
- (2) An order of prohibition to prohibit the Land Adjudication Officer Meru North District implementing his decision dated 13th July 2006 in objection No. 684 of 1995 Kiguchwa Adjudication Section.
- (3) The costs of the application be provided for.

The Motion was supported by the Statement of Facts dated 11th December 2006, and the ex-parte applicant's Affidavit Verifying the Facts sworn on 11th December 2006.

With leave of court, the Interested Party filed his Replying Affidavit on 23.07.2008, the same having been sworn on 4th July 2008. The leave was granted on 18th June 2008, and it required that the affidavit be filed within 21 days. In the event it was not filed until the 23rd July 2008, some thirty five (35) days after the leave was granted. In addition to the Interested Party's Affidavit there was also an affidavit sworn by on 4th July 2008 and filed on 23rd July 2008. This second affidavit was sworn by one Joseph Kiambi M'thiringa, a complete stranger to the proceedings herein. He is not named as one of the three interested parties nor did he apply to be enjoined as an interested party within the provisions of Order LIII, rule 2 of the Civil Procedure Rules. His affidavit has no basis for being on record and the same is struck out.

I will in the interest of justice allow the Replying Affidavit of the Patrick Murungi although filed out of the prescribed time of 21 days as per my order of 18th June 2008.

An Order of certiorari is a prerogative writ to which, notwithstanding any statutory provisions to the contrary recourse may be heard in order to control the action of inferior jurisdictions and to bring them back within the limit assigned by law, whenever there has been a failure, or absence, or excess of jurisdiction.

Similarly the prerogative order of prohibition will issue to an inferior court or authority from the High Court of Justice to prohibit and forbid the inferior court or authority from continuing with proceedings therein, or implementing and carrying out a decision arrived at in excess or without jurisdiction, or in contravention of the law of the land.

From both the Statement of Facts the ex-parte applicants Affidavit Verifying and indeed the Replying Affidavit of the 2nd Interested Party it is acknowledged that the ex-parte Applicant entered into an agreement to sell some five (5) acres to one Peter Kitharia, the brother of the 2nd Interested Party for the price or sum of Ksh.5,000/- The land was located at a place called "**Kirima**". That transaction was however frustrated as another clan claimed the same land, and the purchaser, Peter Kitharia (now deceased) did not wish to get himself embroiled in disputes. He sought and was refunded the purchase price in installments and the final installment of Ksh.1000 having been paid on 28th October 1984. The purchaser acknowledged receipt of the refund of the entire purchase price. So far as the ex-parte applicant the seller was concerned, that was the end of that transaction.

However on 16.11.1995 (some eleven (11) years after the refund by the ex parte applicant, of the purchase price to the late Peter Kitharia, his wife, Juanina Karei Githaira 1st interested party Patric Murungi brother of the deceased 2nd Interested Party, and Bernard Maorwe Kitharia – a son of the deceased –the 3rd Interested Party filed an objection No. 684 of 1995 under section 26 of the Land Consolidation Act (Cap 283 Laws of Kenya)

The objection was heard and determined by the Land Adjudication Officer and in a decision rendered on 13th July 2006, the Land Adjudication Officer awarded the Objectors, five (5.0) acres of the ex-parte applicants land in these terms-

DECISION: objection allowed 5.00H/A from P/No. 1526 of Leonard Kamencu Kairiama to be awarded to Peter Kitharia and he issued with new parcel Number.

L.A.O.

13/07/2006

It is that decision which the applicant challenges on the ground that the Land Adjudication Officer had no jurisdiction to make under section 26 of the Land Consolidation Act which section provides;-

26 (1) any person named in or affected by the adjudication Register who considers such Register to be inaccurate or incomplete in any respect, or who is aggrieved by the allocation of land as entered in the Adjudication Register, may, within sixty (60) days of the date upon which the notice mentioned in Section 25 of this Act is published at the office of the Regional Government Agent within whose district the Adjudication area to which such Register relates is situated (and such date shall be endorsed upon the said 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 valid, order the committee to take such action as may be necessary to rectify the matter and for this purpose the Committee may exercise all or any of the powers conferred by Section 21 of this Act.

The ex-parte Applicant contends that the decision of the Land Adjudication Officer is a nullity as it was made without jurisdiction under Section 26 of the Land Consolidation Act, aforesaid.

Clearly from the above provisions of Section 26 of the Land Consolidation Act, the jurisdiction to consider an Objection is vested not in the Adjudication Officer but in a committee established under section 9 of the Act. The adjudication officer had no jurisdiction to entertain the objection, the petitioner succeeds on this ground alone.

There are however other grounds why the motion should succeed. The Respondent, the Land Adjudication Officer has no jurisdiction to order specific performance of a contract which was time barred.

Both the ex-parte applicant and the 2nd Interested Party acknowledge that the contract for the sale of land was entered into sometime in 1978, and it became frustrated and the purchase price was refunded in toto in 1984. If there was any cause of action, it accrued from 1984, the prescribed period for actions based or founded on contract is six years under section 4(1) of the Limitation of Actions Act (Cap 22, Laws of Kenya) The objection was barred by the Limitation of Action Act and the Respondent could not entertain it. The motion succeeds on this ground as well.

Finally Mr. Rimita learned counsel for the applicant referred me to the Court of Appeal decision in **DAVID MUGO T/A MANYATTA AUCTIONS VS REPUBLIC (Civil Appeal No. 265 of 1997)** which referred to two English decisions which are applicable to this matter and cover the ex applicant's

final ground for the motion, illegality. **In R. vs Criminal Injuries Compensation Board ex-parte Lain** [1967]2 Q.B s.64 Lord Parker C.J. said:-

“the exact limits of the ancient remedy by way of certiorari have never been and ought not to be specifically defined. They have varied from time to time being extended to meet the changing conditions..... we have reached the position when the ambit of certiorari can be said to cover every case in which a body of persons of a public as opposed to a purely private or domestic character has to determine matters affecting subjects provided always that it has a duty to act judicially.”

And in **Rex vs Electricity Commissioners Ex-parte London Electricity Joint Committee Co. (1920), Ltd [1924]IKB. 171, at p. 705 Atkin L.J.** said:-

“Whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the High Court exercised in these writs (prerogative writs).”

In this case, the legal duty imposed upon the Adjudication Officer was to refer the objection to the committee which determines such objections. By purporting to determine the objection alone he acted without jurisdiction and thus illegally. The Motion also succeeds on the grounds of illegality.

Having come to the conclusion that the Respondent acted without authority or jurisdiction and even purported to usurp the jurisdiction of the courts by making orders of specific performance of a contract, the motion succeeds for the prayer of certiorari.

There shall therefore issue an order removing the decision of the Adjudication Officer dated 30th July 2006, to this court, and quash the same.

Having come to this conclusion it is not necessary to make a finding on the prayer on prohibition, having quashed the decision, there is nothing to prohibit. The ex-parte applicant shall also have the costs of the Motion.

There shall be orders accordingly.

Dated, delivered and signed at Meru this 17th day of July 2009

ANYARA EMUKULE

JUDGE