



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

Misc Judicial Review 48 of 2008

**IN THE MATTER OF APPLICATION FOR ORDERS OF JUDICIAL REVIEW IN
THE NATURE OF CERTIORARI AND PROHIBITION
AND
IN THE MATTER OF LAND PARCEL NO. 605 URINGU 1 ADJUDICATION
SECTION
AND
IN THE MATTER OF L.P. NO. 605 URINGU 1 ADJUDICATION SECTIONS
OBJECTION NO. 286
BETWEEN
REPUBLIC APPLICANT
VERSUS
DISTRICT LAND ADJUDICATION OFFICER
IGEMBE/TIGANIA RESPONDENT
JOHN M'LIMBITU ANAMPIU (DECEASED)
Represented by GEORGE KOBIA INTERESTED PARTY
M'MWORIA M'MBUI EX PARTE APPLICANT
JUDGMENT**

The *ex parte* applicant M'Mworia M'Mbui is seeking an order to issue of *certiorari* to call and quash the decision of District Land Adjudication officer Igembe district which was made on 14/3/2008 which awarded the interested party George Kobia obtained 2 acres of land out of parcel No. 605 Uringu/adjudication Section. He also seeks an order for prohibition to stop the implementation of that decision. The application is brought under 3 distinct grounds:

1. That the District Land Adjudication Officer entertained objection number 286 while the objector was deceased.
2. That the District Land Adjudication Officer gave 4 widows of the deceased 2 acres of land and yet they were not parties to the dispute.
3. That the District Land Adjudication Officer relied on contradictory irregular "doctored" family gathering report.

On the issue raised in the first ground, from the proceedings, it is clear that M'Mbui's claim to the land originates from the right acquired by his father whom I assume is the deceased because the land is now in the name of M'Mbui. I find that Section 11 of the Land Adjudication Act accords wide powers to the Adjudication Officer. Section 11(1) specifically provides that:-

"He (adjudication officer) may make a claim or otherwise act on behalf of a person who is absent or under a disability if he considers it necessary to avoid injustice."

Further, section 12(1) permits the adjudication officer the discretion not to follow the procedures of civil suits. The adjudication officer in my view cannot be faulted for having entertained the claim of Kobia who was representing the interests of his deceased father in the claim over the suit land because the law as stated above allowed adjudication officer the discretion to over-look the rules and procedures of civil suits. My finding in respect of ground 1 also applies

to ground 2. The adjudication officer under section 11(c) of the Act which I quoted there above, is entitled to act for any person who is absent from the proceedings in order to avoid injustice. I find that the award made to the deceased widows cannot be faulted since the adjudication officer not only has discretion to disregard the normal civil procedures but can act for absent parties so as to avoid injustice. On the 3rd ground, M'Mbui failed to state what was contradictory or irregular with the family dispute meeting. It ought to be understood that the dispute was heard before the adjudication officer where M'Mbui and Kobia adduced evidence. The adjudication officer also visited the land. After the visit, he wrote his finding whereby he found that the family of Kobia and M'Mbui were utilizing the disputed land. It was as a result of that finding that he made an order that both families were to meet within 7 days to propose how they were to share the land. I stated before the adjudication officer is not restricted by the procedures of civil cases. He has absolute discretion on what evidence he can admit. See section 12(1). In that absolute discussion, he ordered the family to meet. The family met. At that meeting, M'Mbui accepted to give half acre to the wives of the deceased. That consultation is what translated into the adjudication officer's final order that M'Mbui give two acres to the four widows of the deceased. That being so, I am at a loss to understand M'Mbui's argument in respect of the 3rd ground. It does look like after the family dispute meeting and after he had made the consultation, he had a change of heart over the issue. In my view, the notice of motion dated 22nd July 2008 has no merit in view of the above findings and the same is dismissed with costs being awarded to the interested party to be paid by the *ex parte* applicant.

Dated and delivered at Meru this 29th October 2009.

MARY KASANGO

JUDGE