REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Miscellaneous Civil Application 181 of 2008

IN THE MATTER OF AN APPLICATION AN ORDER OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF AN APPEAL TO THE MINISTER
IN THE MATTER OF THE LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA

REPUBLIC……...APPLICANT

VERSUS

MINISTER FOR LANDS AND SETTLEMENT..…1ST RESPONDENT
DIRECTOR OF LAND ADJUDICATION……..…..2ND RESPONDENT
DISTRICT COMMISSIONER, NAROK……..……..3RD RESPONDENT

AND

LEPOSO OLE SAOLI……..…….INTERESTED PARTY/APPLICANT

EX-PARTE

SOITARA OLE SAOLI…….……..…….SUBJECT

RULING

In his Notice of Motion dated 11th October, 2006, the Ex-parte Applicant (the Applicant) seeks the judicial review order of certiorari to quash the decision of the Narok District Commissioner (the DC) made on 22nd August, 2006. This was a decision made on behalf of the Minister for Lands and Settlement in an appeal under delegated authority from the ruling of the Olokurto Adjudication Committee (the Adjudication Committee) awarding Plot No. 60 in that Adjudication Section to the Interested Party. It also seeks an order of prohibition to prohibit the implementation of the said decision.

The Application is, as usual, brought under **Order 53 Rule 1** of the **Civil Procedure Rules**. It is based on the grounds inter alia that the DC refused to hear all of the Applicant's evidence and that the proceedings offended the rules of natural justice.

The Interested Party has besides opposing the application first challenged its competence. He contends that the application is incompetent on the ground that it has not been brought in the name of the Republic and that the DC who made the decision giving rise to this appeal was not duly gazzetted. In support of this contention his counsel has cited the

famous Court of Appeal decision in **Farmers Bus Service & Others Vs The Transport Licensing Appeal Tribunal, [1959] EA 779**.

I find no merit in this contention as the application is brought in the name of the Republic. Also for dismissal is the Applicant's counsel's contention that the DC who made the decision was duly gazetted. This is because that contention does not find any mention in any of the grounds in the application or in the Applicant's affidavit in support of the application. Counsel for the applicant sneaked in a copy of the Gazzette Notice through their written submissions. For these reasons I find that the application is competent.

Having found that the application is competent, I now wish to consider it on its merits.

The first ground on which the application is made is that contrary to the rules of natural justice the DC refused to take all of the Applicant's evidence. The Applicant claims that when the DC visited the land in dispute, instead of hearing the evidence of the Applicant's elders, he directed that their evidence be recorded and sent to him and that even when that was done, he ignored it. The DC is also accused of having refused to hear the Appeal *de novo* and instead proceeded from where his predecessor had left it.

The other complaint is against the interpreter. The Applicant alleges that the Interested Party gave land to the interpreter who in turn skewed the interpretation of the proceedings to favour him.

There is nothing to show that the Applicant applied to have the appeal heard *de novo* or that the DC made the strange direction that the evidence of the Applicant's elders be recorded and sent to him. The Applicant has also not placed any evidence on record to support his allegations against the interpreter. In the circumstances I find no merit in either of these accusations and I accordingly dismiss them as baseless.

The Applicant is, however, on firm ground on the complaint that the entire proceedings right from the Adjudication Committee to the appeal stage flouted the principles of natural justice. He complained that one John Muntet, who sat in the Committee as the Vice Chairman and also testified in favour of the Interested Party in the appeal was the Interested Party's son-in-law who did not disclose that fact. The appeal record shows that the gentleman testified as the Interested Party's witness No. 2.

Surprisingly the Interested Party, both in his replying affidavit and in his counsel's submissions, gave this serious allegation a wide berth. In the circumstances, I must accept as correct the Applicant's contention that that witness who also sat in the Adjudication Committee is the Interested Party's son-in-law and therefore an interested party in the dispute. His participation in the Committee proceedings flouted **Section 8** of the **Land Adjudication Act** which provides:-

> **"8(1) If a member of a committee or board has any interest, direct or indirect, in the determination of a claim to an interest in land which is before the committee or board (as the case may be), and is present at a meeting of the committee or board at which the determination of that claim is under consideration, he shall at the meeting, as soon as practicable after it begins, disclose his interest and not take part in the consideration or discussion of the claim, nor shall he vote on any question with respect to the determination of the claim."**

Even without this provision, generally speaking, fairness requires strict adherence to the two major principles of natural justice - ***audi alteram partem*** (hear the other side) and ***nemo judex in sua causa*** (no one should be judge in his or her own case). These principles are well-established in administrative law. We are in this case concerned with the latter.

It is of fundamental importance that justice should not only be done, but that it should also be manifestly seen to be done. See **R.Vs Sussex Justices, Ex-parte MacCarthy[1923] All E.R. 233.** The participation of the Interested Party's son-in-law in the Adjudication Committee proceedings vitiated the whole process as he cannot be said to have been impartial. Consequently an order of certiorari shall issue to quash the DC's said decision.

The decision having been quashed, there is nothing left to implement. Issuing the order of prohibition sought will therefore be an exercise in futility. The Applicant shall have the costs of this application against the Interested Party.

DATED and delivered this 25th day of November, 2009.

D. K. MARAGA

JUDGE.