



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT MERU**

**Judicial Review 5 of 2009**

**IN THE MATTER OF AN APPLICATION BY M'IBARI GATUGUTI FOR ORDERS OF  
CERTIORARI AND MANDAMUS**

**AND**

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT CAP 26 LAWS OF  
KENYA**

**AND**

**IN THE MATTER OF MWERU III ADJUDICATION SECTION**

**AND**

**IN THE MATTER OF ARBITRATION BOARD CASES NO. 214, 215, 216, 217, 218, 219, 220, 221,  
222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 183, AND 184 ALL OF 2006**

**AND**

**IN THE MATTER OF LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA**

REPUBLIC ..... APPLICANT

VERSUS

LAND ADJUDICATION OFFICER IMENTI SOUTH/NORTH

DISTRICTS ..... 1<sup>ST</sup> RESPONDENT

ARBITRATION BOARD MWERU III

ADJUDICATION SECTION ..... 2<sup>ND</sup> RESPONDENT

FESTUS MWOBOBIA, ALLAN KIRIMI,

GILBERT KAARA & 160 OTHERS ... INTERESTED PARTIES

M'IBARI GATUGUTI ..... EX PARTE APPLICANT

### JUDGMENT

What is the subject of this judgment is the notice of motion dated 19<sup>th</sup> February 2009? The *ex parte* applicant had on 13<sup>th</sup> February 2009 obtained leave of this court to apply for judicial review orders, more specifically, orders of *certiorari* and *mandamus*. By the present notice of motion, the *ex parte* applicant seeks those orders. In the verifying affidavit dated 3<sup>rd</sup> February 2009, the *ex parte* applicant deponed that the arbitration board under the Land Adjudication Act which was constituted on 10<sup>th</sup> November 2008 went contrary to section 7 of the said Act. That the officers who were appointed for that arbitration were four in number whereas in that section they ought to be atleast five. The application is opposed by the interested parties. They filed a replying affidavit which although is undated was filed in court on 5<sup>th</sup> June 2009. In that affidavit sworn on behalf of all the interested parties by Festus Mwobobia they stated that the documents filed in this action had been signed by the son of the *ex parte* applicant. I have looked at the verifying affidavit and I am unable to find evidence to support that allegation. The verifying affidavit dated 3<sup>rd</sup> February 2009 was sworn by M'Ibare Gatuguti who is the *ex parte* applicant in this matter. The interested parties also deponed that the court should look at the substance and not the form and should therefore not pay regard to the manner in which the decision was reached by the arbitration board. They termed the actions of the *ex parte* applicant as one seeking individual interests. In this regard, I refer to the provisions of section 7 (1). It is in the following terms:-

***“7. (1) The Provincial Commissioner of the shall, upon the request of the adjudication area consisting of not less than six and not within the district in which the adjudication from time to time appoint in writing not less arbitration board for a particular question adjudication area:-***

***province in which the adjudication area lies officer, appoint a panel for the adjudication more than twenty-five persons resident are is situate and the adjudication officer may than five persons from the panel to form an arising in an adjudication section within the***

That section clearly shows that the arbitration board members should have been not less than six and not more than 25 persons. In this case, they were four that made the decision of 10<sup>th</sup> November 2008 not tenable because of that non compliance. It is deponed also by the interested parties that the *ex parte* applicant had omitted some of the parcels numbers which had been deliberated upon by the arbitration board. I would respond by saying that what is before court is not an appeal but rather it is an action seeking to review the decision of that arbitration board on the basis that the board contravened the law. Just in an attempt to enlighten one on what judicial review is, I would quote from the book, “*A Practical Approach to Civil Procedure by Stuart Sime.*”

**“Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made. So said Lord Brighman in Chief Constable of the North Wales Police V. Evans (1982) 1 WLR 1155, HL. In the same case, Lord Lord Hailsham of St. Marylebone LC said that the purpose of judicial review is to ensure that an individual is given fair treatment by a wide range of authorities, whether judicial quasi-judicial, or administrative, to which the individual has been subject. It is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that the authority constituted by law to decide the matters in question.”**

I find that the board as constituted which sat and deliberated on this matter on 10<sup>th</sup> November 2008 contravened section 7 of the Land Adjudication Act Cap 204 and accordingly the prayers sought by the *ex parte* applicants are indeed merited. I grant the following orders:-

**1. That an order of certiorari does hereby issue to remove to this Court the decision of Mweru III Adjudication Section Arbitration Board made on 10<sup>th</sup> November, 2008 in Arbitration Board Case Nos. 214,215, 216,217,218, 219,220, 221, 222, 223,224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 183 and 184 all of 2006 and quash the same and other orders therein made without jurisdiction and contrary to the law of the land.**

**2. That an order of mandamus does hereby issue to the Land Adjudication Officer Imenti South/North Districts compelling him to constitute a proper arbitration board, to hear *de novo* Arbitration Board Case Nos. 214,215, 216,217,218, 219,220, 221, 222, 223,224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 183 and 184 all of 2006, as provided for under section 7 of the Land Adjudication Act Cap 284 Laws of Kenya.**

**3. Since the contravention was not committed by the interested parties but rather by the one who constituted the board, each party shall bear their own costs.**

Dated and delivered at Meru this 6<sup>th</sup> day of November 2009.

**MARY KASANGO**

**JUDGE**