



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
Misc. Civ. Appli. 123 of 2003

REPUBLIC APPLICANT

AND

THE DISTRICT LAND ADJUDICATION OFFICER)

TRANS-MARA DISTRICT) 1ST RESPONDENT

SAMSON KISERIAN KILERAI) 2ND RESPONDENT

VERSUS

EX-PARTE WILSON TALENGO LEMUNGE

RULING:

The applicant's application was for an order of certiorari to remove unto this court the decision of the District Land Adjudication Officer Trans Mara District dated 1st August 2003 and quash the same in respect of plot No.869 Ololchani Adjudication Section. He also seeks for prohibitory order prohibiting the District Adjudication officer for implementing the said decision and from holding further proceedings in respect of that plot.

Counsel for Respondent did not appear on the hearing date though served. Application proceeded ex parte.

Mr. Ogutu for the applicant told court that the ex-parte applicant is the registered owner of the plot in question. Adjudication was completed in 1988.

The Adjudication and Register were closed on 8th June 1988. The decision of the 1st respondent, which purported to nullify that registration, was made after the register had been closed and as such it was ultra vires. It is only the committee or the Minister who can nullify the register.

As stated the respondent did not appear on the hearing date. Both had filed replying affidavits but as pointed out by counsel both replying affidavits are undated. The affidavit by 1st respondent does not even show who drew and filed it. It offends provisions of s.34 and 34 of the Advocates Act. However there are grounds of opposition filed.

I have carefully considered the application and the submissions. Though the applicant states that the adjudication process has been finalized there was no evidence to show that. The land in dispute is said to be within Ololchani Adjudication Section. It has not yet been registered. It was for the applicant to show that adjudication process had been finalized and that the land has been registered.

S. 11 of Land Adjudication Act does not state that it is only the committee or the minister who can nullify any registration. That section spells out the powers of the Adjudication officer. S. 12 of the Act clearly stipulates the procedure an adjudication officer has to follow in hearing a petition or objection. These procedures were followed by the adjudication officer as records of the proceedings were made. That section does not state that he has to sit with the committee in hearing the objection.

In the circumstances I find the application has no merit. It has not been shown that the adjudication officer acted ultra vires or that rules of natural justice were not followed. He heard both parties to the objection.

In the circumstances the application is rejected and dismissed.

Dated 20th June 2006.

KABURU BAUNI

JUDGE

CC – Mobisa

Mr. Kemo for 1st Respondent

Mr. Otieno for Ogotu for Applicant.