



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MERU

Misc. Appli. No. 74 of 2005

REPUBLIC
APPLICANT

AND

CHAIRMAN, KARAMA ADJUDICATION SECTION 1ST
RESPONDENT

DEMARCATION OFFICER, KARAMA ADJUDICATION SECTION 2ND
RESPONDENT

LANDS ADJUDICATION & SETTLEMENT

OFFICER MERU NORTH DISTRICT 3RD RESPONDENT

EX-PARTE APPLICANT STEPHEN MUCHERA

RULING OF THE COURT

The ex-parte applicant has brought this application under the provisions of Order 53 Rules 1 (1) and (2) and Rule 4 of the Civil Procedure Rules, Sections 3 and 3A of the Civil Procedure Act and Sections 8(2) and 9 of the Law Reform Act, Cap 26 Laws of Kenya, seeking the following orders:-

(a) That the honourable court be pleased to grant leave to the ex-parte applicant to apply for orders of judicial review to prohibit the respondents from moving him from his ancestral land LR No. KARAMA

ADJUDICATION SECTION F/N 2530.

- (b) That the leave so granted do operate as a stay of the decision of the respondent to remove the applicant from his original ancestral land.
- (c) Costs be provided for.

The ground upon which the application is premised is that the respondents are in the process of removing the ex-parte applicant from his land to another piece of land in a different locality.

From the statement of facts in support of the application, the applicant states that the gathering and consolidation process in Karama adjudication section is now complete and that demarcation is in process. He has also stated that he is the owner of L.R. Karama Adjudication section F/N 2530, which parcel of land is said to have been gathered by the ex-parte applicant way back in 1967. He states further at paragraph 6 thereof that the said parcel of land is ancestral land but that the respondents are now in the process of moving him therefrom to another portion that is not habitable and one that is far away from where resides at the moment. He contents that the reason why he is being moved is because of influence from some affluent people who want to take over his present parcel of land. That is why he seeks the orders prayed for. The applicant also prays that once the leave is granted, the same should operate as a stay of the decision of the respondents to move the applicant from his current portion of land to another.

During the hearing of the application, Mr. Kimathi for the applicant cited the case of **Welamondi V. The Chairman Electoral Commission of Kenya (2002) IKLR 486.**

I have carefully considered the application and the applicant's statement of facts and the verifying affidavit. On the face of the facts that have been laid before me I am persuaded that the application is meritorious. I am satisfied that the applicant has complied with the provisions of Order 53 of the Civil Procedure Rules and also sections 8(2) and 9 of the Law Reform Act. The respondents have threatened to relocate the applicant and the applicant is apprehensive on two fronts:- one that he is likely to be moved to another parcel of land which is not equal in value to the parcel where he currently resides and two that the move is motivated by ulterior motives on the part of the respondents.

In the circumstances, I would allow the applicants application and make the following orders:-

1. The applicant is granted leave to apply for orders of judicial review to prohibit the respondents from moving him from his ancestral land parcel number KARAMA ADJUDICATION SECTION F/N 2530.
2. The leave granted in (1) above to operate as a stay of the decision of the respondent to remove the applicant from his ancestral land.
3. The applicant to file and serve the main motion within 21 (twenty one) days from the date of this order.
4. There be a mention on 10.11.2005 for further orders.

Orders accordingly.

Dated and delivered at Meru this 13th day of October 2005.

RUTH N. SITATI

JUDGE

13.10.05