



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU**

Misc Appli 235 of 2005

IN THE MATTER OF LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA
N THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW PROCEEDINGS
IN THE MATTER OF LAND ADJUDICATION OFFICER NAROK DISTRICT
REPUBLIC APPLICANT

VERSUS

THE LAND ADJUDICATION OFFICER NAROK DISTRICT.....RESPONDENT

AND

TINGA OLE NKUITO INTERESTED PARTY

EX-PARTE

SIMPANO OLE KESIKE SUBJECT

RULING

Simpano Ole Kesike filed this application for Judicial Review on 12th April 2005 pursuant to the leave of this court granted on 24th March 2005. The applicant has sought for orders of certiorari to remove to the High Court and quash the decision of the District Land Adjudication Officer Narok District read on 22nd November 2004 in **Objection Number 195 of 1996**.

The application also sought for an order of prohibition against the Land Adjudication Officer Narok District from acting on the decision read on 22nd November 2004 in **Objection number 195 of 2006**.

Finally, the applicant sought for an order of mandamus to compel the District Land Adjudication Officer Narok to hear and determine the dispute relating to **plot number 425 Olokurto Adjudication Section** within Narok District and between **Simpano Ole Kesike, Reteti Ole Nkaiwatei and Tinga Ole Nkuito** in a manner provided by law.

The grounds that gave rise to the relief sought by the applicant are stated in the body of the application and more specifically expounded in the supporting affidavit sworn on the 12th April 2005. Briefly stated,

it is the applicant's case that **Plot Number 425** situated within **Olokurto Adjudication Section** within Narok District is owned by the applicant, the interested party who is the respondent in this matter, and one **Reteti Ole Nkai Watei**.

According to the applicant, the **Olokurto Adjudication Section** was created sometimes in 1975 and the adjudication exercise was completed and notice was issued to the members of public on 22nd August 1996. The applicant said he was aggrieved and he lodged an objection regarding the adjudication register of a **Plot Number 425** in **Objection Number 195 of 1996**. He contends that his objection was heard on 11th August 2004 when the three owners of the **plot number 425** appeared before the District Adjudication Officer, a Mr. Mwizi M. Mwandu where he presented his case for subdivision of the plot equally among the three of them. The interested party objected claiming that he recovered a portion of 45 acres in the upper side of the former forest area through his own efforts. It was the applicant's view that the decision by the Land Adjudication Officer to allocate the interested party forty five (45) acres more than the others is unreasonable and not supported by the evidence. The applicant lodged several complains with the Area Chief of the Olokurto Location, the D.O and the Land Adjudication Officer and the same was unheeded. It is for these reasons that he brought this application for Judicial Review which was opposed by the interested party. The interested party, **Tinga Ole Nkuito** filed a replying affidavit and the gist of the matters deposed to in the affidavit sworn on 12th July 2006 can be summarized as follows:

The entire adjudication process for Olokurto, Narok was completed in the 10th July 1975 wherein the boundaries for the **Olokurto/Narok Adjudication Section** were clearly spelt out in the 1975 Declaration and members were notified in 1996. The interested party contends that in the year 1998, he recovered a parcel of land which had been taken by the Forest Department, and upon sub-division of the recovered parcel of land which fell within and adjacent to **Plot Number 425** his portion of land is larger by about forty five (45) acres.

Consequently, upon sub-division of **Plot Number 425** the adjudication parcel of land his aggregate parcel of land was larger by approximately forty five (45) acres by inclusion of the portion recovered from the forest. It is for that reason that the applicant aggrieved by that sub-division filed an **Objection Number 195** to the Land Adjudication Officer in 1998 over **Plot Number 425** which was determined in favour of the interested party.

According to the interested party, the decision was read on 11th August 2004, and not 22nd November 2004, and it took into consideration the fact that he recovered the parcel of land which had been taken by the Forest Department alone without any assistance from the applicant or **Reteti Ole Nkai Watei**.

Counsel for the interested party further submitted that this application is bad in law as it was brought outside the statutory period of six months. Moreover, this matter involves land adjudication and decisions by Land Adjudication Officers are subject to the procedures set out under the **Land Adjudication Act Cap 284**, and thus this application is premature.

In considering the remedies sought by the applicant, I have taken into account that these are discretionary remedies which must be granted only on the basis of evidence and sound legal principles. (See the case of **Weda & 14 others –vs- The Council of Legal Education H.C Misc Appl. No. 5 of 1993**). Relevant considerations to bear in mind is that discretionary powers must always be exercised in good faith, for the purpose for which they were granted and within the limits of the Act or other instrument conferring the power. Discretion must also be exercised fairly, not capriciously, and in accordance with proper legal principles and these standards imply that all relevant considerations must be taken into account and that extraneous considerations be disregarded by the person or body exercising the power (See **Halsbury's Laws of England 4th Edition vol. 1 page 70**).

In this case, it is clear that the dispute involves the adjudication over a parcel of land which is governed by the provisions of the Adjudication Act Cap 284. Section 26 one of the Acts provides

“Any person named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer in writing, saying in what respect he considers the adjudication register to be incorrect or incomplete.”

When the objections have been determined, the Act provide that

“Any person aggrieved by the determination of the objection under Section 26 may within sixty (60) days appeal against the determination to the Minister and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.”

It is not clear why the applicant did not follow the laid down procedure as provided for by the relevant law. Moreover, the decision that the applicant seeks to quash is signed and dated 11th August 2004. But the copy that the applicant attaches to his application has a handwritten certification date of 22nd November 2004, this leads to the obvious question of whether the applicant was trying to mislead this court and manipulate the records.

The provisions of **Order L III Rule 4 (2)** of the **Civil Procedure Rules**

“Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”

Counsel for the applicant put up a spirited argument that this court should find that the District Land Adjudication Officer acted outside his powers by determining the dispute in favour of the interested parties and his decision was to alter the adjudication register. He made reference in the case of **Re Kisima Farm Ltd K.L.R** where *Hancox J* held that

“The Commissioner of Lands in determining claims to compensation under Section 9 of the Land Acquisition Act is under a duty to act judicially and, accordingly, an order of prohibition may be made (in appropriate circumstances) to restrain him from continuing the holding of the inquiry into compensation.”

Further he argued that under the general remedies for Judicial Review even if the court were to find that the leave was sought outside the statutory period, this court can still issue a prohibitory order which in his opinion is the same as certiorari.

On the part of **Mr. Kagucia**, Counsel for the interested party, his view was that this application is contrived in such a manner as to support a case that does not exist for reasons that the adjudication exercise was completed and the register closed in 1996. The matter that went for adjudication involves a separate parcel of land and that is why the objection that was filed by the applicant was in 1998. He gave the example of the decision which was clearly read out on 11th August 2004 but the applicant brought a decision which reads 22nd November 2004 an indication of lack of good faith on the part of the applicant. The other indicator, is that the objection by the applicant was actually lodged on 30th August 1998 outside the period when the register was closed.

Having carefully considered this matter, it is clear from the records that this dispute squarely falls under **The Land Adjudication Act Cap 284**, and I see no justification why the laid down procedure under the Act was not followed by the applicant.

Secondly, leave to institute this Judicial Review application was sought outside the statutory period of six months which is provided for under the **Civil Procedure Rules** and under the **Law Reform Act**. It is

clear that the decision by the District Land Adjudication Officer was read and signed on 11th August 2004. The latest date by which the applicant could have sought leave was 11th February 2005.

In the upshot of the all the matters analyzed above, the application is bad in law, there is material non-disclosure of vital information particularly as it is clear the objection filed by the applicant was in 1998 and not 1996. I find that the application has no merit and I hereby dismiss it with costs to the interested party.

Ruling read and delivered on 17th day of November 2006.

MARTHA KOOME

JUDGE