



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA  
AT NAIROBI**

**MISCELLANEOUS APPLICATION NO 246 OF 1998**

**STEPHEN MUTUKU MUTETI ..... APPLICANT**

**VERSUS**

**THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT.....1ST RESPONDENT**

**DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER.....2ND RESPONDENT**

**JULIUS MUTETI ..... 3RD RESPONDENT**

**JUSTUS MUTETI ..... 4TH RESPONDENT**

**RULING**

The application dated 30th March 1998 seeks to bring into the High Court and quash the decision of the Director of the Land Adjudication/District Land Adjudication Officer dated 12th September, 1997. The matter is fairly old but from the record a retired Judge had postponed ruling. The factual basis as per the affidavits filed herein are that Land Parcel Number 2490 Kingoti Adjudication Section was the subject matter of several disputes under the provisions of the Land Adjudication Act Chapter 284 of the Laws of Kenya. It is clear from the exhibited records that the applicant participated in the disputes at all stages claiming ownership of the land. In Committee case Number 11 of 1976 brought under s 20 of the Land Adjudication Act and case Number 43 of 1977 brought under s 21 (4) of the Act.

It is clear from the record that in objection case number 858 the 3rd and 4th respondents were claiming a portion of the land which is the subject matter of this application namely Land Parcel Number 2490 Kingoti Adjudication section. Again it is apparent from the record that the 3rd and 4th respondents failed to prove their claim and the same was dismissed. They did not file any claim with the committee or follow up the matter in the Arbitration Board and thereafter file an appeal. The applicant was not heard by the investigator.

For the respondents it has been argued that the Land Adjudication and Settlement officer acted pursuant to powers conferred on him by sections 9 and 12 of the Act and that s 10(1) stipulates that the Land Adjudication and Settlement Officer has jurisdiction in all claims made under the Act relating to interest in land in the adjudication area with power to determine any question that needs to be determined in connection with such claims and that under s 10(11) he may delegate to his officers. It is therefore contended that he acted within his jurisdiction. Finally that under s 11(b) the Adjudication officer has powers to correct any error or supply any omission occurring in the adjudication register at any time before the register is complete. It is contended that it has not been demonstrated to the court that the register was complete by the time the Adjudication officer altered the boundary. The complaint leading to the Land Adjudication and Settlement officer's decision to order investigation was raised by the applicant

and that he cannot be heard to complain that the rules of national justice were not followed in investigating the claim.

The court has considered the grounds set out in the statement, verifying affidavit and has also considered the skeleton arguments filed by the parties. It has also considered the submissions of counsel.

Whereas the Adjudication officer has jurisdiction under s 9 to hear and determine petition respecting any act done, omission made or decision in hearing any matter within his jurisdiction he is required to hear the parties as per the provisions of s 12 of the Land Adjudication Act.

It looks extremely odd for the respondents to have lost the case in objections filed under s 20 and 21 as outlined above and after the compilation of the register as per the requirements under the Act, the same matter is revived by way of a one sided inquiry or investigation where the parties were not heard at all. This is against the spirit of s 12 of the Act and does in the view of the court constitute a serious procedural impropriety on the part of the 1st and 2nd respondents. It is a denial of the requirements of rules of natural justice quite apart from being a direct violation of s 12 of the Act.

In addition the appeal period as set out in s 29 had expired without the respondents taking up the matter (a) with the arbitration Board (b) with the Minister.

I therefore find that there are serious procedural improprieties.

In addition as per the record exhibited the demarcation map and the adjudication record – which according to s 24 collectively constitute the adjudication register were in existence when the purported boundary was being reinstated. Indeed the map exhibited clearly shows that parcel 2490 which the subject matter of this application does not share any common boundary with parcel 2495 at all.

There was therefore no basis for the respondents to impose the boundary in 2490 – literally dividing the portion into two equal halves on the ground that there existed a common boundary before the demarcation. This is a clear after thought that does not appear to have any factual basis as per the map exhibited. Counsel for the respondents when asked by the court to explain this serious discrepancy did not offer any explanation at all.

This court deals with limits of power because ours is a Government limited by law. When public officials act outside the law aggrieved parties are as of right entitled to ask for relief from the courts so that those limits of power are defined by the court and the necessary sanctions are given. The acts of the defendants are both biased, unreasonable and arbitrary and are not supported by any provision under the relevant Act. The public officers clearly acted outside their jurisdiction. For these reasons a Constitutional and Judicial review court cannot deny the applicant a Judicial remedy because the illegality as set out above clearly bring the matter within the Judicial review ambit. The decision making process is clearly flawed.

Orders shall therefore issue in terms of the application dated 30th March 1998 and the decisions made by the 1st and 2nd respondents are hereby brought up to this court and are hereby quashed.

Orders shall issue accordingly with costs to the applicant.

DATED and delivered at Nairobi this 10th day of June, 2005.

**JG NYAMU**  
JUDGE