



Republic v Ministry of Lands Housing and Urban Development & 7 others; Komen & 4 others (Exparte); Kwambai & 8 others (Interested Party) (Environment and Land Judicial Review Case E004 of 2022) [2022] KEELC 15258 (KLR) (5 December 2022) (Judgment)

Neutral citation: [2022] KEELC 15258 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ITEN

ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E004 OF 2022

L WAITHAKA, J

DECEMBER 5, 2022

**IN THE MATTER OF AN APPLICATION BY NAFTALI KOMEN,
TITUS KOMEN KORIR, LAURANCE KIPROP, SAMWEL
CHEMISTO AND EZEKIEL KIRUI FOR JUDICIAL REVIEW**

AND

**IN THE MATTER OF THE PROVISIONS OF SECTION
8 AND 9 OF THE LAW REFORM ACT (CAP 26)**

AND

IN THE MATTER OF THE LAND ADJUDICATION ACT (CAP 284) LAWS OF KENYA

AND

**IN THE MATTER OF LAND ADJUDICATION PROCEEDINGS AND
DECISIONS/RULINGS/JUDGMENTS ITEN ELC JR. NO. E004 OF 2022
(JUDGMENT) IN RESPECT OF CHEPTOO “B” ADJUDICATION SECTION
PARCELS NO.610, 611, 612, 613, 614, 615, 616, 617 AND 618 FORMERLY
PARCELS NO. 56, 58, 59, 60, 62, 63, 64, 65, 68 AND 92 UPPER CHEPTEBO**

BETWEEN

REPUBLIC APPLICANT

AND

**MINISTRY OF LANDS HOUSING AND URBAN DEVELOPMENT ... 1ST
RESPONDENT**

DIRECTOR OF LAND ADJUDICATION, NAIROBI 2ND RESPONDENT

**COUNTY LAND ADJUDICATION AND SETTLEMENT OFFICER, ELGEYO
MARAKWET 3RD RESPONDENT**



CABINET SECRETARY FOR LANDS, HOUSING & URBAN DEVELOPMENT 4TH RESPONDENT
DIRECTOR OF LAND ADJUDICATION & SETTLEMENT .. 5TH RESPONDENT
COUNTY LAND REGISTRAR, ELGEYO MARAKWET 6TH RESPONDENT
MINISTRY OF INTERIOR AND CO-ORDINATION OF NATIONAL GOVERNMENT 7TH RESPONDENT
ATTORNEY GENERAL 8TH RESPONDENT

AND

NAFTALI KOMEN & 4 OTHERS EXPARTE

AND

DANIEL KWAMBAI & 8 OTHERS INTERESTED PARTY

JUDGMENT

Introduction

1. Pursuant to leave granted on June 8, 2022 to the ex parte applicants, to institute judicial review proceedings against the judgment/decision, verdict, findings and proceedings of the 1st to 6th respondents contained in the judgment/decision given on September 22, 2021 in appeal to the Minister case No 83 of 2018, the ex parte applicants, filed the notice of motion dated June 24, 2022 and filed on June 27, 2022 seeking an order of certiorari to remove to this court for purpose of being quashed the said decision.
2. The decision sought to be quashed relates to parcels of land Nos 610, 611, 612, 613, 614, 615, 616, 617 and 618 situated in Upper Cheptebo 'B' Adjudication Section, Elgeyo Marakwet County (hereinafter referred to as the suit properties).
3. The suit properties were subject of the processes of adjudication of rights to land provided for under the *Land Adjudication Act*(LAA), Cap 284, Laws of Kenya. The process of adjudication of rights over the suit property culminated in an appeal to the Minister to wit Appeal No 83 of 2018. The ex parte applicants who were the appellants in the appeal, lost the appeal.
4. The ex parte appellants had also lost objection proceedings that they had preferred to the Land Adjudication Officer (LAO). They had, however, won the claim before the Land Adjudication Committee and the Land Arbitration Board.
5. Aggrieved by the outcome of the appeal, the ex parte applicants brought the instant proceedings claiming that they were not given a fair hearing; that the respondents did not observe rules of natural justice; that the respondents were biased against them; acted in excess of their jurisdiction, failed to take into account the parties' agreement/ memorandum of September 28, 1978 which the ex parte applicant claim was binding on him.
6. The decision of the Minister is said to be tainted with illegality, irrationality and procedural impropriety.



Analysis and determination

7. A detailed judgment/ruling of the LAO shows that he considered the cases urged by the parties to the case before him and the evidence presented. In that regard, see the following excerpts of his decision which attest to that fact.

' There is very close association between the plaintiffs and the above parcels through grazing, cultivation, development etc, homestead, built semi permanent and permanent houses. There are several burial sites for the plaintiffs. No single development or association from the side of the defendants. One wonders why there were allocations of $\frac{1}{4}$ or $\frac{3}{4}$ by committee or arbitration board cases for objection Nos 56, 59, 60, 65, 62, 63, and 64. The land under dispute is not that of stones, because no boundary clearly marked by stones. It was rather 'CHEBEBWA' no man's land. Hence people who were on the ground during the time of demarcation were recorded as owners of those parcels, thus as per Cap 284, Laws of Kenya then before demarcation there had involved hearing in those parcels. It is not interest of public or government to make anybody squatters, people who claim those parcels stay in Uasin Gishu county (defendants) but all the plaintiffs stay on the ground. There are around six burial sites and no prove of documents to show from side of defendants there tried to object this more so burials were done in different times. For the interest and farmers of Justice, I have made the following ruling:

JUDGMENT

Objection Nos 03, 31, 32, 33, 26, 27, 28, 29 and 30 touching on the following parcels 618, 615, 616, 617, 610, 611, 612, 613 and 614 are all allowed, whole parcel No 618 to be owned by Joseph Kipruto Kwambai, while all other parcels 615, 616, 617, 610, 611, 612, 613 and 614 reverse back to original Nos. as per demarcation. Hence plot No 615, 616, 617, 610, 611, 612, 613 and 614 are all cancelled. Names of person (defendant) deleted from A/R RO A granted within sixty days as per Cap 284 Laws of Kenya from day.

July 20, 2012.

LAO

8. On appeal to the Deputy County Commissioner, Keiyo North (DCC) vide appeal to the Minister Case No 83 of 2018, proceedings of the appeal case shows that parties were heard, by themselves and their witnesses.
9. The DCC Keiyo North considered the case urged before him and made the following findings:-

Findings

Parcels number 610, 611, 612, 613, 617 and 618.

The defendants of parcels number 610 and 611 are very old and thus would require special attention if they were to appear in person. They have sent a representative, Joseph Kipruto Kwambai-ID number XXXX.

The defendants in parcel number 612, 613 and 617 are present in court and wish that they are represented by Joseph Kipruto Kwambai-ID No XXXX for the original family land was subdivided to create these individual parcels.

Parcel number 618 is registered under the name of Joseph Kipruto Kwambai-ID number XXXX and he is present in court.



- 1) The defendants have lived on these parcels No 610, 611, 612, 613, 617 and 618 for a very long period of time, some since 1972 while on these parcels, they have referred to these parcels as their ancestral home and they have developed permanent structures on the parcels depending on the ability of an individual. The defendants have further planted perennial crops such as mangoes and cotton. They have supplied piped water and electricity to their homesteads.
- 2) The appellant and the defendants were aware of the survey work which was to start in the Upper Cheptebo 'B' Section. Elders agreed to demarcate land parcels to individuals found on the places they live to which the defendants were registered accordingly and respectively on their plots. The law of adverse possession would further benefit the defendants on those parcels.
- 3) The defendants representatives or next of kin have demonstrated and explained clearly how they have buried their loved ones on parcels Nos 614, 615 and 616 without any one objecting to such burials.
- 4) The appellants have never used or lived on those parcels. They have no development records on the parcels under dispute.
- 5) Given the stated duration of time the late defendants had occupied the suit properties to the present time when their children are occupying these parcels, the law of adverse possession would automatically allow them to own these parcels of land compared to the appellants and others who have never utilized these parcels Nos 610, 611, 612, 613, 617 and 618.

Decision

10. Appeal dismissed parcel Nos 610, 611, 612, 613, 617 and 618 to remain registered as follows:-

1. Parcel No 610
To remain registered under the name of Daniel Kwambai
2. Parcel No 611
To remain registered under the name of Richard Kibet Kigen.
3. Parcel 612
To remain registered under the name of Henry Kurgat.
4. Parcel 613
To remain registered under the name of James Sawe.
5. Parcel No 617
To remain registered under the name of Paul Kiptarus.
6. Parcel No 618
To remain registered under the name of Joseph Kipruto Kwambai.

11. Although it is not part of the duty of this court to consider the merits of the decision of the Minister or the other tribunals established under LAA, for purposes of ascertaining interests in land under adjudication, I have set down excerpts of the proceedings of the case before the LAO and the Minister with a view of demonstrating that those tribunals, in discharge of the mandate vested in them, heard



the cases presented before them, evaluated the evidence and arrived at decisions based on their own appreciation of the evidence.

12. It is trite law that this court has no power to sit on appeal on those decisions. All what it can do, is to review the proceedings with a view of determining the legality or otherwise of those proceedings.
13. Whereas in the circumstances of this case, the ex parte applicants contend that there were illegalities and/or unfairness, bias in the proceedings that culminated in the impugned decision of the Minister, they have adduced no evidence capable of proving the pleaded, illegality, bias, unfairness and lack of jurisdiction on the part of the Minister to make the decision he made.
14. A review of the impugned decision shows that the parties were heard by themselves and their witnesses and the evidence tendered considered before a decision was made.
14. Whilst the ex parte applicants claim that the Minister was duty bound to abide by the agreement/memorandum signed between the parties in 1978, no law or rule of procedure was cited in support of the applicants' claim or contention. Being the ones who desired a ruling based on that contention, the applicant should have given the law or rule of procedure on which they based their claim. This court knows of no legal obligation placed on the Minister or the other tribunals under LAA to, in exercise of their duties under LAA to give effect to agreements or memorandums signed between parties before them. All what they are required to do, is to consider such document as part of the evidence presented and if there be good reason, they are not bound to rely on such agreement if not in tandem with the totality of the evidence adduced before them.
15. The upshot of the foregoing is that this suit is found to be lacking in merit and is dismissed with costs to the respondents and the interested parties.
16. Orders accordingly.

DATED, SIGNED AND DELIVERED, AT ITEN THIS 5TH DAY OF DECEMBER, 2022.

L. N. WAITHAKA

JUDGE

Judgment read virtually in the presence of:

Mr. cheptarus for the exparte applicant

Ms. Cheruiyot h/b for Mr. Leting for 1st – 6th respondents

Christine Towett – Court Assistant.

