REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL MISCELLANEOUS APPLICATION NO. 319 OF 2000

REPUBLIC :... APPLICANT

VERSUS

THE DISTRICT LAND ADJUDICATION

AND SETTLEMENT OFFICER – KITUI..................RESPONDENT

10 Coram: J. W. Mwera J.

Musyoki K. Advocate for Applicant

Orinda State Counsel for Respondent

C.C. Muli

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R U L I N G

Applying for orders of certiorari under O. 53 r. 3 Civil Procedure Rules Mwangangi Nthoka desires that the decision/directions issued by the District Land Adjudication and Settlement Officer to the demarcation officer Kilawa II Adjudication Section on 27.4.2000 be brought here and quashed, because, so Mr. K.

20 Musyoki argued, that officer did not have jurisdiction in essence to direct his junior officer to put into force some past court orders regarding land No. 90 in the said adjudication section, in a manner that could make the said court orders, to be reverted to presently, invalid. The Learned State Counsel represented the adjudication officer while the interested party one Mwangangi Kingele appeared in person.

All sides were agreed that before adjudication started in Kilawa area in 1996 there had been some litigation involving Nthoka and Kingele over the land that features here as No.90. Kingele claimed that he bought 7 acres of this land from Nthoka's brother (probably now deceased) for Sh.11,000/=; he paid Sh.9,000/=. That litigation in the lower court at Kitui ended with Kingele agreeing to pay that balance to Nthoka whereupon his seven (7) acres would go to him. Kingele told the court that he paid that money and even took possession but that Nthoka stuck on the land. That adjudication came into the area and apparently it is during it that the adjudication officer directed the demarcation officer on the ground to hive off 7 acres from

10 Nthokoi's land. According to Mr. Musyoki the land adjudication had no business to take decisions and issue directives the way he did, and this was by letter dated 27.4.2000, touching on court orders which had involved the said land. That despite adjudication the litigants' consent orders recorded by the lower

court on 21.6.94 only remained to be implemented. That a further lower court order of 31.1.99 was issued to effect just that.

On his part the Learned State Counsel submitted that in the first place Nthoka had not obtained the due land adjudication officer consent under S.30 of the Land Adjudication Act to bring these proceedings and that by his letter of 27.4.2000 that

20 officer was doing nothing more that to enjoin his junior in the field to demarcate the land of the parties in accord with past court orders. That this letter was a necessary administrative direction to do what was necessary and proper on the ground.

The letter however seemed to say in part:

> "Therefore whereas Mr. Nthoka retains P/No. 220 and Kingele P/No.90, P/No.90 of Mr. Kingele should be 7 acres more than P/No. 220 since after the subdivision of P/No.90 into 2 equal portions, Mr. Kingele should be added the 7 acres he bought."

This left Mr. Musyoki's client and Mr. Musyoki himself with the impression that in essence the land adjudication officer's directive of 27.4.2000 was to give Kingele a total of 14 acres from Nthoka's land.

10 Kingele however told the court that what was to go on could only give him his seven (7) acres which he bought. He concluded in his submission:

> "I am not getting 7 acres plus other seven to make 14. I do not want that."

The following is this court's decision. Beginning with the relevant part of S.30 Cap. 284

> "30.(1) Except with the consent in writing of the adjudication officer, 20 no person shall institute, and no court shall entertain civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects………..
>
> (2) Where any such proceedings were began before the publication of the notice under S.5 of this Act, they shall be discontinued, unless the adjudication officer, having regard to the stage which the proceedings have reached, otherwise directs."

30 It is thus clear from the law that once adjudication starts in an area new civil proceedings regarding interests in land in that area shall be brought but with the written consent of the local land adjudication officer. True, in Kilawa adjudication came after the litigants here had their case over the right of land by purchase had gone on. It can be said that with the partie's consent of 21.4.94, all that remained or did not remain was the parties to do what they had agreed. Kingele told the court that he paid the balance of Sh.9,000/= and got his 7 acres; he took possession. That ought not to have attracted the force of S.30(2) had the order of 31.1.97 not been gone into. Adjudication started in 1996 in the area. Bringing of proceedings ending with the order of 31.1.97 i.e. continuing with proceedings that started before adjudication, was invalid because the law says that such proceedings ought to have been discontinued unless the land adjudication officer considered how far they had progressed, and then directed. There is no evidence that that was done.

In any case these very judicial review proceedings are proceedings of a civil nature. It is not shown that S.30 (above) was invoked to bring them. So in all these, these proceedings are incompetent in law.

The only saving grace is that Kingele only wants his 7 acres and no more than what he paid for. At this stage he wants that demarcated from Nthoka's land and given to him so that registration reflects the same. May that be so.

In sum the application is dismissed with costs.

Orders accordingly.

Delivered on 26th September 2001.

J. W. MWERA

JUDGE