



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAROK**

**JUDICIAL REVIEW NO. 4 OF 2019**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS AND**

**IN THE MATTER OF INFRINGEMENT AND THE CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOM UNDER THE CONSTITUTION OF KENYA 2010 ARTICLES 22,23,24,27(1) (2) (3) (4) AND (5),40,47(1),60,64,69,259 AND 260**

**AND**

**IN THE MATTER OF THE LAND ADJUDICATION ACT CAP 284 SECTIONS, 5,6,25,26 AND 30**

**AND**

**IN THE MATTER OF THE ENVIRONMENT ND LAND ACT, 2012 SECTIONS 12 AND 13 (1)**

**AND**

**IN THE MATTER OF FAIR ADMINISTRATION ACT SECTIONS 1,2,3,7 AND 10**

**THE ILLEGAL, WROGPNFUL AND IRREGULAR NOTICE OF COMPLETION OF ADJUDICATION REGISTER NAI SOYA ADJUDICATION SECTION NAROK NORTH SUB COUNTY-NAROK COUNTY BY THE LAND ADJUDICATION AND SETTLEMENT OFFICER NAROK NORTH/EAST SUB COUNTIES DATED 8<sup>TH</sup> MAY, 2019**

**AND**

**IN THE MATTER OF THE NAI SOYA LAND ADJUDICATION SECTION**

**AND**

**IN THE MATTER OF SAMUEL LETANGUES NAINGISA, DANIEL LELEPO TIKANI AND PATIYIE OLE NAIKUMI AND OVER 344 OTHER REGISTERED LAND OWNERS WITHIN THE NAI SOYA LAND ADJUDICATION SECTION NAROK NORTH SUB COUNTY NAROK COUNTY SECTIONS**

**BETWEEN**

**SAMUEL LETANGUES NAINGISA.....1<sup>ST</sup> APPLICANT**

**DANIEL LELEPO TIKANI.....2<sup>ND</sup> APPLICANT**

**PATIYIE OLE NAIKUMI.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**THE DIRECTOR OF LAND**

**ADJUDICATION AND SETTLEMENT.....1<sup>ST</sup> RESPONDENT**

**THE LAND ADJUDICATION & SETTLEMENT OFFICER NAROK**

**NORTH/EAST SUB-COUNTIES.....2<sup>ND</sup> RESPONDENT**

**THE OFFICIALS OF THE NAI SOYA LAND**

**ADJUDICATION SECTION.....3<sup>RD</sup> RESPONDENT**

**THE ATTORNEY GENERAL .....4<sup>TH</sup> RESPONDENT**

**JUDGEMENT**

The Applicants in this matter filed a Notice of Motion dated 15/08/2019 seeking the following Orders:-

1. An Order of Certiorari to remove into this Honourable court and quash the decision of the 2<sup>nd</sup> Respondent contained in the Notice of Completion of Adjudication register Naisoya Adjudication Section of 8<sup>th</sup> May,2019 which gave the members of the Naisoya Land Adjudication section 60 days to inspect the register as the adjudication section would be dissolved.
2. An Order of Mandamus to compel the 2<sup>nd</sup> Respondent to rescind his decision contained in the Notice of Completion of Adjudication Register Naisoya Adjudicatoin Section of 8<sup>th</sup> May, 2019.
3. An Order of Prohibition to forbid the Respondents by themselves and/or their agents, servants or personal assigns from proceeding to complete the Naisoya Adjudication section pursuant to the notice dated 8<sup>th</sup> May,2019 entering subdividing, apportioning, alienating, transferring, wasting and or interfering with the Applicant's quiet possession and enjoyment to all their registered private property situated within the Naisoya Land Adjudication Section an established Land adjudication section of North Sub County-Narok County pending the hearing and determination of this Application.

In Support of their Application, the Applicants herein through the 1<sup>st</sup> Applicant, Samuel Letangues Naingisi swore an Affidavit dated 15<sup>th</sup> August, 2019 in which he contended acts of illegality irregularities and wrongfulness with respect to the Notice dated 8<sup>th</sup> May, 2019 issued by the Land Adjudication & Settlement Officer, Narok North/East Sub Counties. That the Notice failed to adhere to Article 10 of the Constitution on public participation and principles of good governance. The Notice is intended to take away land from him and the 334 members of the Naisoya Land Adjudication Section. The Applicants are also apprehensive that if the Adjudication Section is completed, then they remain to suffer as they will not possess their rightful parcels of land. He also contends that this is a very sensitive matter which if not properly handled is likely to result into bloodshed.

The 1<sup>st</sup>,2<sup>nd</sup> and 4<sup>th</sup> Respondent's filed their Replying Affidavit through the 2<sup>nd</sup> Respondent herein dated 24<sup>th</sup> September, 2019. In opposition to the Application, the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents contend that the Notice dated 8<sup>th</sup> May, 2019 is not an administrative decision to warrant this court's intervention to grant the orders. The said notice was issued in accordance with Section 25 of the Land Adjudication Act. Further, that the Applicants herein have not filed any objections to the effect that they have a claim over the allocation of land and based on that, the available avenue for redress would have been to file an Objection with the Sub county Land Adjudication and Settlement Officer.

The 3<sup>rd</sup> Respondent filed a Replying Affidavit dated 3<sup>rd</sup> February, 2020 in opposition to the Application dated 15<sup>th</sup> August, 2019. The 3<sup>rd</sup> Respondent contends that the Applicants herein are not in anyway deprived of their right to own land in this Adjudication Section since they each own land registered in their names in the register. That as the Secretary of the 3<sup>rd</sup> Respondent, the committee followed due process up until 8<sup>th</sup> May, 2019 when the Notice was issued. The 3<sup>rd</sup> Respondent further contends that the application is misconceived and is aimed at derailing the process. Further that failure to invoke Section 30 of the Land Adjudication Act amounts to abuse of court process and the same ought to be struck out.

I have analyzed the substantive Notice of Motion, the affidavits in reply and the Submissions filed by all parties and the issues for determination are:-

1. Whether the Notice dated 8<sup>th</sup> May, 2019 amounts to a final decision of the Land Adjudication and Settlement Officer.
2. Whether the Applicants are entitled to the relief sought.
3. Who is to bear the costs.

The principles for Judicial Review is well settled in a number of cases. In the case of **Republic Vs Kenya National Examination Council Ex-Parte Gathenji And Others Civil Appeal No. 266 Of 1996**

**“Prohibition looks to the future so that if a tribunal were to announce in advance that it would consider itself not bound by the rules of natural justice the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice. However, where a decision has been made, whether in excess or lack of jurisdiction or whether in violation of the rules of natural justice, an order of prohibition would not be efficacious against the decision so made. Prohibition cannot quash a decision which has already been made; it can only prevent the making of a contemplated decision.....Prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings**

therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings.....The order of *mandamus* is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right or no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual. The order must command no more than the party against whom the application is legally bound to perform. Where a general duty is imposed, a *mandamus* cannot require it to be done at once. Where a statute, which imposes a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a *mandamus* cannot command the duty in question to be carried out in a specific way...These principles mean that an order of *mandamus* compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. An order of *mandamus* compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same but if the complaint is that the duty has been wrongfully performed i.e. that the duty has not been performed according to the law, then *mandamus* is wrong remedy to apply for because, like an order of prohibition, an order of *mandamus* cannot quash what has already been done...Only an order of *certiorari* can quash a decision already made and an order of *certiorari* will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons”.

I totally agree with the finding of the superior court and in the instant case, I find that the Land Adjudication & Settlement Officer performed his role within the confines of Section 25 and 26 of the Land Adjudication Act, Cap 284. The Notice dated 8<sup>th</sup> of May, 2019 is also clear on the steps to be taken in the event that a party is aggrieved by the contents of the Adjudication register including the timelines.

I agree with the submissions of the Respondents to the extent that the Applicants have not fully exhausted the alternative remedy as provided in Section 29 of the Land Adjudication Act and in the circumstances, the instant application is premature and consequently the Notice of Motion dated 15<sup>th</sup> August, 2019 lacks merit and I thus dismiss the same with costs.

**DATED, SIGNED and DELIVERED ONLINE on this 18<sup>th</sup> day of February, 2021.**

**Mohamed N. Kullow**

**Judge**

**18/2/2021**

In the presence of:-

CA:Chuma

Mr. Lemein holding brief for Mr Naikuni for the applicants

N/A for the 1<sup>st</sup>, 2<sup>nd</sup> & 4<sup>th</sup>

N/A for the 3<sup>rd</sup> respondent

**Mohamed N. Kullow**

**Judge**

**18/2/2021**