



Republic v Attorney General & 2 others; Longorkemer (Exparte Applicant) (Environment and Land Miscellaneous Application 2 of 2023) [2024] KEELC 13534 (KLR) (2 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13534 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 2 OF 2023
FO NYAGAKA, J
DECEMBER 2, 2024**

IN THE MATTER OF AN APPLICATION BY LINGAKIN LONGORKEMER FOR AN ORDER OF CERTIORARI TO BRING INTO THIS HONOURABLE COURT AND QUASH THE DECISION OF 24/12/2012 BY THE DISTRICT COMMISSIONER POKOT SOUTH AND WHICH WAS MADE ON BEHALF OF THE MINISTER OF LANDS AND HOUSING

BETWEEN

REPUBLIC APPLICANT

AND

THE HON ATTORNEY GENERAL 1ST RESPONDENT

THE DISTRICT COMMISSIONER POKOT SOUTH 2ND RESPONDENT

JOSEPH PKERKER NGOLEPUS 3RD RESPONDENT

AND

LINGAKIN LONGORKEMER EXPARTE APPLICANT

RULING

1. The Application dated 14/02/2023 came for further hearing on 13/11/2023 when the National County Surveyor in charge of West Pokot gave evidence regarding a survey he had conducted on the suit parcels of land, being, West Pokot/Chepkono/209 and 883, pursuant to orders of this court, as made on 22/10/2024. At the end of his (Surveyor’s) testimony, learned counsel for the 3rd Respondent moved the Court for orders that grants the 3rd Respondent prayed for seven (7) days to avail information on some documents the said party had and for the Land Adjudication Officer to be summoned to attend court to shed light the information party had on the matter.



2. The 3rd Respondent submitted that the instant part-heard Application related to a Judicial Review application which was determined by consent as between the parties therein, on the understanding that the said consent would disturb only the Minister's decision on the Appeal that had been preferred against the decision of the Land Adjudication Committee. The instant application, which was a post-judgment one, having been urged was subsequently converted to a viva voce one wherein evidence was given. The Ex Parte Applicant was not heard as the first person in the dock. His case relating to his matter was heard from the surveyor and the documents that the surveyor produced in evidence.
3. The 3rd Respondent contended that he wondered whether when he consented to the Judicial Review application being resolved by the consent referred to, it was a resolution of the dispute by way of a misrepresentation. He urged that for the court to understand his position as at the time he consented to the Judicial Review application being resolved there was need for the evidence from the Land Adjudication Officer to be tendered in court. Further, he had looked at the documents before the court, they spoke to a process at the tail end of the matter and the documents were very scarce as to the beginning of that process.
4. His further submission was that the Court ought therefore to have an opportunity to look at what was at the Adjudication Objection case, in this case, Objection Number 238 wherein the Ex Parte Applicant was the Respondent. That is when the Court would appreciate the position as per the Ex Parte Applicant concerning parcel number 209 since 1969. It would give the court a picture to help it interpret the sketch map sought to be used and appreciate the dispute between Mr. Ngolepus and Lingarkin Longorkemer, which decision, to him, was yet to be implemented on the ground on a misunderstanding that the pendency of the appeal amounted to a stay of execution.
5. He contended that the parties were waiting for the final orders of the court on the appeal. That was the reason why they had two divergent views between the Ex Parte Applicant and the 3rd Respondent now. Further, the parties agreed on the boundary fixed by the Ex Parte Applicant. They also agreed with the surveyor as to the acreage of the disputed land being 19.94 hectares.
6. The 3rd Respondent wished the Court to deduce that all the documents used were from 1997, with entry No. 52 in the Preliminary Index Diagram (PID) and also that there was entry No. 46 and 51 as they appear on the rough book, which is a statutory document. Further, that the information together with the clarification from the Land Adjudication Officer as to the basis of the reinsertion of the 10-meter road on the rough book was the most crucial information on the matter before the court, of which the 3rd Respondent would be bound by in the decision the court would arrive at.
7. He contended that the surveyor had indicated in his evidence that he was uncomfortable answering that question, and the Ex Parte Applicant had no reason to be afraid of the information the Land Adjudication Officer would give. But it could be suspicious if he thought that the information was not relevant. He submitted that any action by a public officer such as the Land Adjudication Officer had to be taken pursuant to the law or an express order of the court. It was subject to judicial audit. He submitted that the 3rd Respondent only wanted to know whether that the reinstatement of the 10-metre was pursuant to either the law or a decree of the court.
8. On his part, the Ex Parte Applicant argued that what was before the court was that there were objection proceedings on account of whose conclusion they created land parcel number 883. The parties had lived with the decision over the years. The problem only arose when the Minister's decision was implemented, some time when the appeal was lodged, by the removal of the brace on the Registry Index Map. The Minister's decision was subsequently quashed by consent. The parties were to confirm if the return of the brace was to restore the parties to the position they were in after the objection.



9. He contended that to call for evidence of the Land Adjudication Officer would be going outside of the instant Application brought by the Ex Parte Applicant. Further, that the Applicant was unaware of any proceedings other than those before the court. The court was only to receive a clarification by the Surveyor in order to give it a chance to determine the application.

ISSUE, ANALYSIS AND DETERMINATION

10. I have considered the application before me. I have also considered the submissions by both learned counsel and the the law regarding instant Application.
11. The Respondent argues that the evidence of the Land Adjudication Officer is core to the Application herein which stems form the need by this court to determine an application dated 14/02/2023. The Application was brought by the Ex Parte Applicant, seeking the authorization of the Deputy Registrar of this court to sign the mutation form which the National County Surveyor in charge of the West Pokot County had prepared over parcel numbers West Pokot/ Chepkono/209.
12. In order to understand the basis of the instant application, clearly it is worth noting that when the Court was in the process of preparing a ruling regarding the application dated 14/02/2023, it became necessary for it to receive expert evidence, through a surveyor, as compared to the position on the ground in the relation to the parcels of land in issue, and the intended amendment of the Registry Index Map (RIM). The proposed amendment was by way of return of the brace that had been removed when the Minister's decision was implemented. That decision would be quashed subsequently, following the filing of a judicial review application over the matter. The decision of the Minister was settled in the Judicial Review Application by setting it aside by the consent of the parties.
13. With that in mind it is clear that the Ex Parte Applicant moved this Court to do only one thing: to order the reinstatement of brace that was removed by virtue of the order of the Minister. That is what the court is to determine. It was not called upon to adjust any boundaries on the ground or receive any evidence to vary the position on the ground as was determined by the Land Adjudication Committee as at 28/08/1992. The concern of the court was simple and shall remain to be so: that is to say, to confirm whether the position of the Ex Parte Applicant and the 3rd Respondent on the ground remained the same since 28/08/1992, and whether the return of the braces has any effect on the positions of the parties on the ground.
14. This Court is of the view that Surveyor's Report made following this Court's order was as was given on 22/10/2024 and the oral evidence adduced by the said officer who visited the suit lands in the presence of the parties pursuant to the directions of the court, and subsequently made the report he gave in evidence to the court is sufficient for the court to determine whether the brace should or should not be returned. Otherwise, to call for evidence of the Land Adjudication Officer to show a different position on the ground than how the parties were settled on as at 28/08/1992, which position has remained the same to date would amount to litigate once more the objection proceedings which were concluded long ago, in 1992.
15. The 3rd Respondent argues that the decision of the Adjudication Committee had never been implemented since the parties believed that the pendency of the appeal acted as a stay of the execution of the same. This Court notes that the records (documents) show that there was no stay of execution given in that appeal or the decision appealed from. Moreover, this Court observes that after the Appeal was filed, the Minister determined it. There was thus no appeal pending after that determination and no stay of execution, if any, though there was none, was obtaining to bar the implementation of the determination by the Land Adjudication Committee. Again, after the Minister made his determination, *Judicial Review No. 17 of 2013* dated 27/02/2013, was filed and it overturned the



decision of the Minister. Therefore, the appeal ceased to exist upon that determination, and the parties fell back to the position as was determined by the Land Adjudication Committee on 28/08/1992. On this position, both herein parties agree.

16. In my humble view, the decision of the Land Adjudication Committee regarding the ground settlement of the parties was implemented and that is why the parties have lived on the respective portions of the suit land as they have since 28/08/1992. After all, Mr. Ngolepus had succeeded in the adjudication proceedings and that was why the Ex Parte Applicant appealed. Nowhere do the proceedings show that the boundary fixed then by the Committee after their decision was by the Ex Parte Applicant. Moreover, if the 3rd Respondent was of the view that the settlement of the Judicial Review Application by consent was a misrepresentation, as he argues now, he should have moved the Court at the appropriate time but not to attempt to re-litigate the Adjudication Proceedings at this stage and in this instant matter. Further, for the 3rd Respondent to urge this Court to consider his mind in the settlement of the Judicial Review Application in the instant application means calling on the Court indirectly to review the consent his father entered into voluntarily, which settled the issues between him and the Ex Parte Applicant many years ago.
17. The upshot is that the prayer for the Land Adjudication Officer to be called to testify on the instant Application, whether to show the intention of Ngolepus at the time of appearing before the Land Adjudication Committee or entering into the consent to settle the Judicial Review, and give a different ground settlement position than has been since 28/08/1992, is declined. Therefore, this Court shall now proceed to give a date for the ruling on the Application dated 14/02/2023, as will be directed separately.
18. Orders accordingly

DATED, SIGNED AND DELIVERED AT KITALE VIA THE TEAMS PLATFORM ON THIS 2ND DAY OF DECEMBER, 2024.

HON. DR. IUR FRED NYAGAKA

JUDGE, ELC KITALE

In the presence of:

Kiarie Advocate-----for the Applicant

Wanyama Advocate-----for the 3rd Respondent

