



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT CHUKA

ELC MISCELLANEOUS JUDICIAL REVIEW CASE NO...E006.....OF 2021

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDER OF CERTIORARI

AND

IN THE MATTER OF ARTICLES 23(3)(f), 40,48,50 THE CONSTITUTION OF KENYA,2010

AND

IN THE MATTER OF THE LAND ADJUDICATION ACT,CAP 284 LAWS OF KENYA

AND

IN THE MATTER OF SECTIONS 8 & 9 OF THE LAW REFORM ACT,CAP 26

IN THE MATTER OF LAND PARCELS KAMARANDI B' PARCEL 719 &720

IN THE MATTER OF THE APPEAL TO THE MINISTER NO. 309/2020 & 310/2020

BETWEEN

NAFTALY NTHENDU RUBANE.....APPLICANT

VERSUS

THE DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER

THARAKA SOUTH SUB-COUNTY.....1ST RESPONDENT

D. COUNTY COMMISSIONER

THARAKA SOUTH SUB-COUNTY.....2ND RESPONDENT

THE LANDS REGISTRAR.....3RD RESPONDENT

THE HON. ATTORNEY GENERAL.....4TH RESPONDENT

AND

DAVID MURIUNGI KIANIA.....1ST INTERESTED PARTY

PETER MURITHI MUCEE.....2ND INTERESTED PARTY

RULING

1. This application has been brought to court by way of Chamber Summons dated **14.4.2021** which states:

EX-PARTE CHAMBER SUMMONS

Under Article 23(3)(f),40 and 50 of the Constitution of Kenya,2010, Order 53 Rule 1 &2 of the Civil Procedure Rules,2010 , Section 26,27,28 &29 of Land Adjudication Act, Cap 284 laws of Kenya and all other enabling provisions of the law.

LET ALL PARTIES concerned attend the Honourable Judge in chambers on the.....day of2021 at 9 o'clock in the forenoon or soon thereafter for the hearing of an application by counsel for the Applicants for ORDERS: -

1. THAT this application be certified urgent;
2. THAT the Applicants be granted leave to apply for:-
 - a) An order of Certiorari be issued to the 1st & 2nd Respondents quashing the decisions of the findings of the Appeal Case No. 309 of 2020 & 310 of 2020 to the Minister delivered on the 5th of March,2021.
 - b) An order of Prohibition to issue against the Respondents prohibiting them from implementing or enforcing the offensive recommendations and the decision contained in the proceedings of Appeal to the Minister Case No.309/2020 and 310/2020 made on the 5th March,2021 in relation to Parcel Nos.719 &720.
3. THAT the grant of leave do operate as a stay of proceedings pending the determination of this suit.
4. THAT the costs of this application be provided for.

THIS APPLICATION is grounded upon the matters set out in the Statutory Statement and the Verifying Affidavit of NAFTALY NTHENDU RUBANE and upon other grounds and reasons in law to be adduced at the hearing hereof.

DATED at CHUKA this.....14th day of ...April,.....2021FOR: KIJARU, NJERU & CO.

ADVOCATES FOR THE APPLICANT

2. The Chamber Summons is supported by a statement which reads as follows:

STATEMENT

Under Article 23(3)(f),40,48 and 50 of the Constitution of Kenya,2010, Order 53 Rule 1 &2 of the Civil Procedure Rules,2010 , Section 26,27,28 &29 of Land Adjudication Act, Cap 284 laws of Kenya and all other enabling provisions of the law.

A. NAME AND DESCRIPTION OF PARTIES

1. The Applicant is a male adult person of sound mind working for gain as a farmer and residing in Kenya within Tharaka Nithi County. His address of service for the purpose of this suit is care of **KIJARU, NJERU & CO. ADVOCATES, NKARI HOUSE OPPOSITE MURINGA VENTURES, P.O BOX 483-60400, CHUKA.**
2. The 1st Respondent is the Land Adjudication Officer within Tharaka Sub-County with the mandate to exercise general supervision and control over the adjudication process.
3. The 2nd Respondent is the County Commissioner Tharaka South empowered to hearing and determining Adjudication appeals brought forth by any party aggrieved by the decision at the Adjudication Objections.
4. The 3rd Respondent is the Lands Registrar within Tharaka Nithi County empowered to keep proper land records.
5. The 4th Respondent is the Chief Legal advisor of the government of Kenya created under Article 156 of the Constitution of Kenya whose mandate includes representation of the government in civil suits.

B. RELIEFS SOUGHT

6. THAT the Applicant be granted leave to apply for:-
 - a) An order of Certiorari be issued to the 1st & 2nd Respondents quashing the decisions of the Proceedings to the Minister Case No. 309 of 2020 & 310 of 2020 via a Ruling delivered on the 5th March,2021.
 - b) An order of Prohibition to issue against the Respondents prohibiting them from implementing or enforcing the offensive recommendations and the decision contained in the proceedings of Appeal to the Minister Case No.309 of 2020 & 310 of 2020

made on the 5th March, 2021 in relation to Parcel Nos. KAMARANDI B'719 & 710.

7. THAT the costs of this application be provided for.

C. GROUNDS ON WHICH THE RELIEFS ARE SOUGHT;

The Applicants seek the aforementioned reliefs on the grounds THAT:

1. THAT the decision of the 2nd Respondent to award Land Parcel KAMARANDI B' 709 & 710 to the Interested Parties was biased as it failed to consider the evidence of the Applicant by virtue of the fact that the said parcel of land was gathered, demarcated, developed by the applicant.
2. The decision by the County Commissioner in going ahead to grant the Interested Parties parcels KAMARANDI B' 719 & 720 which is bad in law as the 2nd Respondent did not put into consideration the issue that the Applicant has been in the parcel of land for over 36 years and has extensively developed the parcel of land by planting palm trees and other permanent trees.
3. The factors that led the 2nd Respondent to arrive at the decision contained in the Ruling therein are irrelevant and were only meant to deprive the Applicant and deny him his right to enjoy quiet possession of land parcels KAMARANDI B' 719 & 720.
4. The 2nd Respondent relied on the statements of the Interested Parties alleging that he met the applicant on the land parcels in 2011 and started establishing and marking boundaries on the parcels of land despite the fact that the Interested parties disapproved the same statement prior at the Adjudication proceedings.
5. The 2nd Respondent has acted in bad faith by averring that land parcels KAMARANDI B' 719 & 720 be shared equally between the Interested Parties and the Applicant.
6. The 2nd Respondent relied on the misleading statements of the interested parties alleging the close proximity between the Applicant and the Interested Parties whereas the statement was only meant to deprive the Applicant his land parcels.
7. The 2nd Respondent in totality disregarded the law by finding that the Interested Parties have all the absolute rights over the parcel despite the findings of the Demarcation Officer at the Board, Adjudication Officer.
8. The 2nd Respondent abused his powers by stating that the Interested Party is entitled to the whole parcel of land without any compelling evidence via the Ruling.
9. The 2nd Respondent violated the principles of natural justice by going ahead to order an equal sub-division on the applicant's parcels of land, without factoring in his developments, the period he has been in possession and utilizing the land and it is the place he has been calling and still calls home since time immemorial.

DATED at CHUKA this.....14th .. day ofApril,2021

FOR: KIJARU, NJERU & CO.

ADVOCATES FOR THE APPLICANT

3. When the application came up for ex-parte hearing on **26.4.2021**, advocate Kijaru told the court that the applicant was seeking an order of certiorari to quash the decision of the 1st Respondent delivered on **5th March, 2021**. He told the court that the applicant had occupied the suit property since time immemorial. Perhaps he meant that the applicant's family had lived on the suit property since time immemorial. He also told the court that the impugned decision was ultra vires.

4. I find it necessary and merited to allow the application in the following terms:

- a) Leave is granted for prayers 2(a) and 2(b).
- b) Prayer 3 is granted.
- c) Costs shall be in the cause.

Delivered in open Court at Chuka this **26th day of April, 2021** in the presence of:

CA: Ndegwa

Kijaru for the applicant

P. M. NJORGE

JUDGE