



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

ELC MISC. JUDICIAL REVIEW APPLICATION NO. E005 OF 2021

IN THE MATTER OF AN APPLICATION FOR LEAVE TO FILE JUDICIAL REVIEW PROCEEDINGS FOR ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS

AND

IN THE MATTER OF THE LAW REFORM ACT, CAP.26, THE LAND ADJUDICATION ACT, CAP. 284, THE FAIR ADMINISTRATIVE ACTION ACT NO.4 OF 2015 LAWS OF KENYA AND ORDER 53 OF THE CIVIL PROCEDURE RULES

AND

IN THE MATTER OF THE PROCEEDINGS, FINDINGS AND DECISION MADE ON 18.03.2021 IN APPEAL NO. 93/2018 OVER PARCEL OF LAND NO. 1233 SITUATE IN KAMANYAKI/KAMARANDI ADJUDICATION SECTION WITHIN THARAKA SOUTH SUBCOUNTY

BETWEEN

ROSCO KIBARA MANGAARA.....EX-PARTE APPLICANT

VS.

THE DEPUTY COUNTY COMMISSIONER THARAKA

SOUTH SUBCOUNTY.....1ST RESPONDENT

THE DIRECTOR LAND ADJUDICATION AND

SETTLEMENT RESPONDENT.....2ND RESPONDENT

THARAKA SOUTH SUBCOUNTY LAND ADJUDICATION

AND SETTLEMENT OFFICER.....3RD RESPONDENT

ATTORNEY GENERAL.....4TH RESPONDENT

AND

PAUL KIRIMI KIRIA.....INTERESTED PARTY

RULING

1. This application was brought to court by way of Chamber Summons dated 19th April, 2021 which reads as follows:

EX-PARTE CHAMBER SUMMONS

(Pursuant to Sections 8 & 9 of the Law Reform Act, Cap 26, The Fair Administrative Actions Act No.4 of 2015, and Order 53 Rule 1 (1), (2) and (4) of the Civil Procedure Rules

LET ALL PARTIES concerned attend the Honourable judge in chambers on the day of 2021 at nine O'clock in the forenoon or so soon thereafter for hearing of this application for orders that the Honourable court be pleased to :-

1. Certify this application extremely urgent and hear it on priority basis in the first instance.
2. Grant leave to ex-parte applicant to apply for a writ of certiorari to call into the High Court and quash the proceedings, findings and decision made by the 1st Respondent on 18.03.2021 in objection Appeal No. 93 of 2018 over land parcel No. 1233, situate in Kamanyaki/Kamarandi Adjudication Section.
3. That the leave so granted, do operate as stay of implementation on the ground, of the decision made on 18.03.2021 in objection Appeal No. 93 of 2018 over land parcel No. 1233, situate in

Kamanyaki/Kamarandi Adjudication Section, pending filing, hearing and determination of the substantive notice of motion.
4. That the honourable court do hereby order the 1st and the 2nd respondents to supply the Ex-parte Applicant with the proceedings and the decision of the Appeal against the decision in Objection No.114 of 2008 in relation to P/No.1233 Kamanyaki/Kamarandi Adjudication Section forthwith
6. Order that costs herein abide the outcome of the substantive notice of motion application.

WHICH APPLICATION is premised on the statutory statement of facts and verifying affidavit sworn by ROSCO KIBARA MANGAARA plus the exhibit thereto annexed, hereinbefore filed, and the unfolding laconic grounds :-

- 1) The Ex-parte Applicant filed an objection case No. 114/2008 against the Interested Party claiming land Parcel NO. 1233 Kamanyaki/Kamarandi Adjudication Section which apparently had been unlawfully registered in the name of interested party.
- 1) The said objection was heard and allowed by the 3rd Respondent while sitting with the appointed committee members and ordered that the land belongs to the Ex-parte Applicant.
- 2) The interested party subsequently filed an appeal with the minister in accordance with Section 29 of the land Adjudication Act, CAP 284 Laws of Kenya.
- 3) The 1st Respondent sitting on behalf of the Minister overturned the decision on 18.03.2021 and purported to give the interested party the Ex-parte Applicant's land.
- 4) The 1st Respondent further exhibited extreme bias in the conduct of his proceedings and

proceeded to rely on irrelevant matters to disregard the testimony of the Ex-parte Applicant's witness his witnesses.
- 5) The 1st Respondent disregarded the testimony of the Ex-parte Applicant and his witness and instead relied on non-existing evidence of the interested party. This was outright bias.
- 6) The 1st and 2nd respondents have completely refused to supply the ex-parte applicant with the proceedings, decision and the adjudication register to enable pursue these proceedings despite various demands. They keep tossing the applicant and his advocate from one place to another.
- 7) That all this is a larger scheme to deprive the ex-Parte applicant his land
- 8) The 1st Respondent acted in excess of his authority by purporting to give the Interested Party land that belong to the Ex-parte Applicant without any basis.
- 9) The 1st Respondent made the verdict in Appeal to the Minister land case No.93 of 2018 capriciously and with extreme bias.
- 10) The decision of the 1st Respondent is against the Rule of law.

DATED AT MERU THIS 19TH DAY OF APRIL,.... 2021

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FOR. THANGICIA M. DAVID & CO.

ADVOCATES FOR EX-PARTE APPLICANT

2. The application was supported by a Statutory statement of Facts dated **19th April**, 2021.

3. At the ex-parte stage, Mr. Thangicia, the applicant's advocate, told the court that the 1st and 2nd respondents had refused to avail to them the proceedings which spawned the impugned decision. He also told the court that although the applicant had his home on the suit land, the Interested Party was threatening to evict him from the land and hence there was need for the leave granted in this matter to operate as a stay of execution of the impugned decision.

4. Upon consideration of the apposite issue, I find that this application is meritorious.

5. In the circumstances, I issue the following orders:

a) Prayers 1, 2, 3 and 4 are granted.

b) Costs shall be in the cause.

DELIVERED IN OPEN COURT AT CHUKA THIS 21.4.2021 in the presence of:

CA: Ndegwa

Thangicia for the applicant

P. M. NJORGE,

JUDGE.