



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**JUDICIAL REVIEW NO. 28 OF 2016**

**IN THE MATTER OF JUDICIAL REVIEW ORDERS OF CERTIORARI**

**AND**

**IN THE MATTER OF JUDICIAL REVIEW ORDERS OF L.R NO 3049**

**ANKAMIA ADJUDICATION SECTION**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**DISTRICT LAND ADJUDICATION AND**

**SETTLEMENT OFFICER TIGANIA EAST.....1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**AND**

**FRANCIS M'IKIUGU M'ARUNGU.....INTERESTED PARTY**

**EXPARTE APPLICANTS**

**JOSEPH MUGAMBI M'IKIUGU**

**MARTIN KOBIA M'IKIUGU**

**JUDGMENT**

1. This matter relates to the Motion filed before this court on 26.1.2017 brought pursuant to **Order 53 rule 1, 2, 3 and 4 of the Civil Procedure Rules 2010 and Section 8 and 9 of the Law Reform Act**. The applicants seek Judicial Review orders of Certiorari to call and quash the respondent's arbitrary decision made on 14/08/2016 to sub-divide and transfer L.R NO 3049 ANKAMIA ADJUDICATION SECTION to 3<sup>rd</sup> parties without involving the applicants who are the actual occupants of the said land.

2. The case for the exparte applicants is set out in the substantive motion, the statement of facts, the verifying affidavit and the supporting affidavit of the applicants. The ex-parte applicants aver that the registered owner of the land parcel No. 3049 Ankamia Adjudication Section is the interested party who is their father. That in the year 1990 the interested party gave the ex-parte applicants 5 acres each which they have intensively and extensively developed and built permanent houses.

3. That on 14/08/2016 they learnt that the interested party had colluded with the 1<sup>st</sup> respondent to subdivide the suit land without involving them with the intention of transferring the land to 3<sup>rd</sup> parties leaving them destitute. That the land is ancestral, of which they are entitled to the same.

4. In their submissions, the ex parte applicants have reiterated the averments set out in their affidavits and statement of facts.

5. The respondent and the interested party did not file any replying affidavits. However, all parties have filed their respective submissions. In **Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 others [2018] eKLR**, the Supreme Court held;

***“A Replying Affidavit is the principal document wherein a respondent’s reply is set and the basis of any submissions and/or List of Authorities that may be subsequently filed. Absence this foundational pleading, the Replying Affidavit, it follows that even the Written Submissions purportedly filed by the 1st Respondent on 17th August, 2018 are of no effect.”***

6. The respondents and the interested parties have not given any plausible explanation as to why they did not file any pleadings. As such, their submissions amount to nothing in so far as the facts of the case are concerned. The court will however consider any point of law raised therein.

#### **Determination**

7. **The purpose of judicial review is not to review the decision but the decision making process. This was so stipulated in Municipal Council of Mombasa v Republic & another [2002] eKLR where it was held as follows:**

***“The court would only be concerned with the process leading to the making of the decision”.***

8. Thus Judicial review is concerned with the process leading to the said decision and not the merits of it and an order of certiorari is meant to quash a decision of a person or a tribunal performing a public duty which decision or act complained of is tainted with illegality, irrationality and procedural impropriety.

9. **The ex-parte Applicant seeks orders for the decision of the Land Adjudication and Settlement Officer to be quashed based on the grounds that they were not given a hearing before the said decision was given. First and foremost the court notes that the decision of the 1<sup>st</sup> respondent being sought to be quashed has not been availed before this court. No explanation has been advanced as to why the ex parte applicants have not availed the said decision along with the relevant proceedings. The said decision forms the central point of reference in determining the merits of this case. In absence of the same, the Judicial Review Suit was dead on arrival.**

10. Secondly, it has emerged that the ex parte applicants are claiming the land on the basis of ancestry. However, the claim of ownership of the suit land is not an issue within the scope of Judicial Review. As pointed out in the body of this judgment, Judicial Review is not concerned with the merits of the decision, but the decision making process. It follows that the applicants cannot purport to assert their rights to the land on the basis of ancestral claims through this Judicial Review Suit.

11. In the final analysis, I find that this suit is not merited. The same is hereby dismissed. Each party to bear their own costs of the suit.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 21<sup>ST</sup> DAY OF APRIL, 2021 IN PRESENCE OF:**

C/A: Kananu

Ms. Mbaikyata holding brief for Kiety for AG

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**