



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT CHUKA**

**MISC. JUDICIAL REVIEW APPLICATION NO. E004 OF 2021**

**IN THE MATTER OF: AN APPLICATION FOR LEAVE FOR JUDICIAL REVIEW**

**ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS**

**AND**

**IN THE MATTER OF: ARTICLES 40 and 43 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF: ORDER 53 RULES 1, 2, 3 AND 4 OF THE CIVIL PROCEDURE RULES, 2010**

**AND**

**IN THE MATTER OF: SECTIONS 8 and 9 OF THE LAW REFORM ACT, CHAPTER 26 LAWS OF KENYA**

**AND**

**IN THE MATTER OF: SECTION 7, 10 and 11 OF THE FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015**

**AND**

**IN THE MATTER OF: SECTIONS 29 OF THE LAND ADJUDICATION ACT CAP. 284;**

**LAND ADJUDICATION RULES 1970 and KAMARANDI 'B'**

**ADJUDICATION SECTION – PARCEL NO. 73**

**AND**

**IN THE MATTER OF: APPEAL TO THE CABINET SECRETARY**

**IN-CHARGE OF LANDS AND PHYSICAL PLANNING NO. 103 OF 2018**

**AND**

**IN THE MATTER OF: ISSUANCE OF TITLE IN RESPECT OF KAMARANDI 'B'**

**ADJUDICATION SECTION – PARCEL NO. 73**

**BETWEEN**

**JOSEPH MUTEMI NKUNO.....1<sup>ST</sup> APPLICANT**

**MOSES NKUNO MAKEMBO.....2<sup>ND</sup> APPLICANT**

VERSUS

THE CABINET SECRETARY,

MINISTRY OF LANDS AND PHYSICAL PLANNING.....1<sup>ST</sup> RESPONDENT

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

GEREVASIO MUGAO NYAGA.....INTERESTED PARTY

RULING

1. This application seeks the following orders:-

1. **THAT** the Honourable Court be pleased to certify this application urgent and upon such certification, be pleased to hear the application *ex parte* in the first instance;

2. **THAT** this Honourable Court be pleased to grant leave to the Applicants to apply for an Order of *Certiorari* to bring into this Honourable Court for the purpose of being quashed the decision and award of the 1<sup>st</sup> Respondent dated 18-11-2020, made and delivered on his/her behalf by the Deputy County Commissioner, Tharaka South Sub-County on the 08-02-2021 relating to **Kamarandi 'B' Adjudication section – parcel no. 73**;

3. **THAT** this Honourable Court be pleased to grant leave to the Applicants to apply for an Order of *prohibition* to prohibit the 1<sup>st</sup> Respondent by themselves, agents or whomsoever from issuing a title in favour the interested Party in respect of **Kamarandi 'B' Adjudication section – parcel no. 73** which includes the portion belonging to the 1<sup>st</sup> Applicant;

4. **THAT** this Honourable Court be pleased to grant leave to the Applicants to apply for an Order of *Mandamus* to direct the 1<sup>st</sup> Respondent to re-demarcate **Kamarandi 'B' Adjudication section – parcel no. 73**, issue a fresh number for the portion belonging to the 1<sup>st</sup> Applicant, and issue the 1<sup>st</sup> Applicant with a title for the same;

5. **THAT** the leave granted to *operate as a stay* of the of the implementation of the 1<sup>st</sup> Respondent's decision and award dated 18-11-2020, until the hearing and determination of the intended Judicial Review proceedings;

2. The application is supported by a statement of facts and verifying affidavit.

3. Miss Kijaru, at the *ex parte* stage, asked the court to grant prayers 2, 3, 4 and 5 in the application.

4. Having considered all relevant issues, the following orders are issued:

a) Prayers 2, 3, 4 and 5 are granted.

b) Costs shall be in the cause.

Written and delivered in Court at Chuka this 19<sup>th</sup> day of April, 2021 in the presence of:

CA; Ndegwa

Miss Kijaru for the Applicant

**P. M. NJOROGE,**

**JUDGE.**