



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC JUDICIAL REVIEW CASE NO. 05 OF 2019

IN THE MATTER OF AN APPLICATION FOR LEAVE TO INSTITUTE

PROCEEDINGS IN THE NATURE OF JUDICIAL REVIEW

AND

IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT, 2015

AND

IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF LAND PLOT NO. 160 MARIANI LAND ADJUDICATION SECTION

AND

IN THE MATTER OF OBJECTION NO. 1128

BETWEEN

BENSON NCHUNGE KUJOGA.....APPLICANT

VERSUS

THE LAND ADJUDICATION OFFICER,

MARIANI ADJUDICATION SECTION.....RESPONDENT

DESIDERIO NKONGE KIRIGU.....INTERESTED PARTY

RULING

1. This application was brought to court vide Chamber Summons dated **9th of August, 2019** which stated that it was filed pursuant to Order 53 Rules 1 and 2 of the Civil Procedure Rules. On 7th August, 2019, the court ordered as follows:

- a) Application to be served upon the other parties in terms of Order 53, Rule 1(4) of the Civil Procedure Rules.
- b) Application to be heard interpartes on 4th September, 2019.

2. The Chamber Summons seeks the following orders:

1. That this matter be certified urgent, and be heard during this court's vacation.

2. That leave do issue for the applicant to apply for:

3. An order of certiorari to remove into this court and quash the decision of the Land Adjudication Officer, Mariani Adjudication Section, Meru South Adjudication Area, delivered on 29th day of April, 2019 in respect to objection No. 1128: Plot No. 160 pending hearing of the main application.

4. That costs of this application be provided for.

3. The Chamber Summons is supported by the verifying affidavit of Benson Nchunge Kujoga, the applicant, which was filed on **5th August, 2019**. The verifying affidavit states as follows:

VERIFYING AFFIDAVIT

(Pursuant to Order 53 Rules 1 and 2 of the Civil Procedure Rules, 2010)

I, Benson Nchunge Kujoga, ID NO. 4451047, a resident of Mariani in Tharaka Nithi within the Republic of Kenya and of Post Office Box, Chuka in the said Republic do make oath and state as follows:

1. That I am an adult male of sound mind, a senior citizen and registered owner of Plot No. 160, Mariani Adjudication Section with the knowledge of the facts attending to this matter hence competent to swear this affidavit.

2. That the Land Adjudication Officer in charge of Mariani Adjudication Section heard and delivered his decision in respect of my objection No. 1128. (Annexed hereto and marked "BNK 1" is a copy of the proceedings.)

3. That I do not agree with the said decision as the same was arrived at by and/or while relying on and/or on the basis of erroneous and misleading records of the respective proceedings.

4. That the facts recorded in the proceedings are substantially erroneous and misleading.

5. That arising from the erroneous decision I risk losing my parcel of land and which is our ancestral land.

6. That the Interested Party has been issuing eviction and life endangering threats which have connection to ownership of the said land and which I reported to the police. (Annexed hereto and marked "BNK 2" is a copy of the OB/report made to the police).

7. That I verily believe that the ends of justice will be better served by staying and ultimate quashing of the decision of the respondent.

8. That what is deponed herein is true to the best of my knowledge, believe and understanding.

9. The application was opposed through the Replying Affidavit of the Interested Party which was filed on **19th August, 2019**. The replying affidavit states as follows:-

REPLYING AFFIDAVIT

I, DESIDERIO NKONGE KIRIGU of C/O P. O. Box 1568-60200, do hereby make oath and solemnly state as follows:-

1. That I am the Interested Party herein well versed with the facts of this matter and therefore competent to make and swear this affidavit.

2. That I have read the contents of the application dated 5.8.2019 and it is in response thereto that I wish to state as follows:-

3. That the application is without merit due to the following reasons;

a) That vide a judgment of this court in Judicial Review No. 4 of 2017 the Respondent was ordered to hear the dispute between me and the applicant within the confines of the law.

b) That indeed I duly lodged the complaint in that the applicant had unlawfully entered my parcel of land.

c) That we were properly heard by the Respondent a culmination whereof the objection No. 1128 was ruled in my favour.

d) That the Respondent did hear our testimonies and that of witnesses across the divide.

e) That further to that he visited the locus in quo and true to my testimony found that the applicant has his land adjacent to mine.

f) That the applicant now wants to encroach on my land by asking for stay of the implementation of the decision.

4. That the decision making process was properly adhered to as advised by my counsel on record.
5. That the decision should not be disturbed, I have found justice at last.
6. That litigation must come to an end.
7. That what is deponed to herein is true to the best of my knowledge and belief, sources of information whereof I have disclosed.

Dated at Meru this 17th day of August, 2019

5. The application was heard orally on **4th September, 2019**. The applicant's advocate told the court that the parties have gone to various fora up to the level of the District Land Adjudication and Settlement Officer but the dispute had not been satisfactorily settled. He further told the court that the applicant had exhausted all reasonable available mechanisms and hence this application. He told the court that the orders he sought in this matter could not be obtained at the Ministerial level. He claimed that there were threats to dispose of the property.

6. Miss Njenga for the Interested Party opposed the application. She said that she was relying on the respondent's replying affidavit dated **17th August, 2019**. She told the court that it had on **14th May, 2019** delivered its judgment which ordered that an adjudication officer other than the two officers who had handled the impugned objection hear the dispute afresh. She submitted that the parties were heard afresh and the adjudication and Settlement Officer (DLASO) in his decision made a decision in favour of the Respondent. She claimed that the applicant sought an order of stay to allow him to encroach upon the respondent's land. She concluded that the applicant was challenging the merits of the DLASO'S decision rather than the decision making process. She urged the court to find that the application lacked merit and should be dismissed.

7. To put matters into their proper perspective, I reproduced in full this court's Judgment in **JR No. 4 of 2017** which was delivered on **14th May, 2018:-**

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA JUDICIAL REVIEW NO. 04 OF 2017

FORMERLY MERU MISCELLANEOUS APPLICATION CASE NO. 04 OF 2007

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS IN THE NATURE OF CERTIORARI, MANDAMUS AND PROHIBITION OVER THE DECISION OF THE LAND ADJUDICATION OFFICER MARIANI ADJUDICATION SECTION MERU SOUTH DISTRICT ADJUDICATION AREA DATED 29TH SEPTEMBER, 2006

AND

IN THE MATTER OF LAND PLOT NUMBER 160 MARIANI LAND ADJUDICATION SECTION

AND

IN THE MATTER OF OBJECTION NUMBER 1128

BETWEEN

DESIDERIO NKONGE KIRUGU.....APPLICANT

VERSUS

THE LAND ADJUDICATION OFFICER MARIANI ADJUDICATION SECTION.....1ST RESPONDENT

BENSON NCHUNGE KUJOGA.....INTERESTED PARTY

JUDGMENT

1. The Notice of Motion in this matter states that it is predicated upon order **LIII Rule 3 of the defunct Civil Procedure Rules and sections 8 and 9 of the Law Reform Act, Chapter 26 of the Laws of Kenya**. The application seeks the following orders:

1. That this honourable court do grant the ex-parte applicant an order of judicial review in the nature of certiorari to bring up and quash the decision of the Respondent dated 29th September, 2006 pursuant to an objection No. 1128 lodged by the Interested party which decision was to the effect that land plot No. 160 be awarded to the Interested party.

2. That this honourable court do grant the ex-parte applicant an order of Judicial Review in the nature of Mandamus to compel the Respondent to alter the adjudication records and return land plot No. 160 to the ex-parte applicant as initially registered in the records.

3. That this honourable court do grant the ex-parte applicant an order of judicial review in the nature of prohibition to prohibit the Respondent from any way interfering with the ex-parte applicant (sic) land plot No. 160 Mariani Adjudication Section.

4. That costs be provided for.

2. Inter alia, the application has the following grounds:

a) That the Respondent who initially heard this objection No. 1128 one Mr. A. Khaemba did not conclude the same as Mr. Daniel Mutuku took over and wrote a finding which was followed by a decision completely flawed and thus amounting to a miscarriage of justice as the latter did not appreciate the facts of this case as initially recorded by his predecessor.

b) That regard being had to the foregoing the ex-parte applicant's right to a fair hearing was jeopardised by having an officer who did not hear him write a decision.

c) That the Respondent was biased in his findings and therefore did not discharge his duties as required by law in the objection proceedings NO. 1128 in relation to Land plot No. 160 Mariani Adjudication section as he did not initially hear this dispute.

d) That the decision arrived at by the Respondent in the objection proceedings was without basis regard being had to the facts of the matter and the circumstances of the case.

e) That the manner in which the Respondent exercised (sic) his discretion was unreasonable regard being had to the objection before him and the veracity of the evidence tendered if at all.

f) That the Respondent did not avail a fair hearing to the ex-parte applicant herein.

3. The Statement Of Facts accompanying the application for leave to apply for Judicial leave states:

A. THE NAME AND DESCRIPTION OF THE APPLICANT

1. The name of the ex-parte applicant is Desiderio Nkonge Kirigu

2. The ex-parte applicant is a resident of Meru South District in the Republic of Kenya.

B. THE FACTS RELIED UPON

3. That Interested party herein lodged an objection No. 1128 over land plot No. 160 in Mariani Adjudication Section Meru South Adjudication Area.

4. That Interested party stated that he is claiming land Plot No. 160 because Silas Metha Magambo did not give him a he-goat.

5. That the records showed that the parcel of land belonged to the Applicant herein.

6. That the Interested party testified that the applicant herein had bought the parcel of land from Silas Metha Magambo which fact was not true and not supported by any evidence be it documentary or otherwise.

7. That the Interested party's witnesses testified that Silas Metha Magambo was to give a he goat or the suit land could revert to Nchunge.

8. The ex-parte applicant lamented why the Interested party had sued him when he should have sued Silas Metha Magambo the one who sold him the suit land.

9. That the Respondent stated that elders agreed that the suit land belongs to Nchunge's family which elders were not called to give evidence.

10. The Respondent found that the suit land was subdivided and sold to Nkonge Agustino, (sic) Eustace Kaburu Mutunga.

11. That the Respondent did not visit the locus in quo to be able to appreciate this dispute as it is the ex-parte applicant who is in exclusive occupation of the land plot NO. 160 Mariani Adjudication Area.

C. THE RELIEF SOUGHT IS:

12. That the applicant seeks relief that

i) An order of certiorari to remove into the High Court and quash the decision made by the Land Adjudication Officer, Mariani Adjudication

Section Meru South District Adjudication Area dated 29th September, 2006.

- ii) An order of mandamus to compel the Land Adjudication Officer Mariani, Adjudication Section to alter the Adjudication records and return land plot NO. 160 to the applicant.
- iii) An order of prohibition to prohibit the Land Adjudication Officer Mariani, Adjudication Section Meru South Adjudication Area from in any (sic) interfering with the applicant's land plot No. 160 Mariani Adjudication Section.
- iv) Grant of leave herein do operate as stay of operation of the decision dated 29th September, 2006 as the same relate to land plot No. 160 Mariani Land Adjudication Section pending the hearing and determination of the Notice of Motion to be filed herein.

D. THE GROUNDS ON WHICH THE RELIEF IS SOUGHT

13. That the objection was heard by one A. Khaemba a Land Adjudication Officer but the findings and the ultimate decision was recorded and signed by one Daniel Mutuku N. on 29th September, 2006 who did not have an opportunity to hear the parties.
14. That in essence this objection No. 1128 was adjudicated upon by one officer who apparently did not hear the parties as can be discerned by the proceedings as annexed in the verifying affidavit.
15. That evidently the handwriting of A.KHAEMBA and his signature is different from the handwriting of Daniel Mutuku N as can be discerned from the proceedings (sic) this fortifies the ground that this objection was done by 2 officers. One took down the evidence and the other came in to write the finding and make a decision.
16. That clearly this is unacceptable for reasons that the one who wrote the findings and the decision did not have an opportunity to hear and take the evidence of the witnesses and neither was he in a position to cross-examine them.
17. That in the foregoing no wonder the facts as found by the later (sic) were such that no person acting judicially and properly instructed could have come to the determination of the issue as found.
18. That the decision arrived at by the Respondent was unreasonable regard being had to the objection before him.
19. That in the foregoing the right to a fair hearing was jeopardised.
20. That the decision and the finding was arrived at without a basis by the Respondent.
21. That the manner in which the Respondent excised his discretion was unreasonable regard being had to the objection before him and the veracity of the evidence tendered.
22. That the Respondent did not avail a fair hearing to the applicant and therefore the decision is subject to the supervisory jurisdiction of this court.

DATED AT MERU THIS 10TH DAY APRIL 2007

FOR KIAUTHA ARITHI & CO.

ADVOCATES FOR THE EX-PARTE APPLICANT

4. The parties canvassed the application by way of written submissions which are reproduced in full herebelow:

EX-PARTE APPLICANT'S SUBMISSIONS

ON PLEADINGS

Your Lordship, by his Notice of Motion dated 10.4.2007 the applicant seeks the following reliefs;

1. That this honourable court do grant the ex-parte applicant an order of judicial review in the nature of certiorari to bring up and quash the decision of the respondent dated 29th September, 2006 pursuant to an objection No. 118 lodged by the Interested Party.
2. That this honourable court do grant the ex-parte applicant an order of Judicial Review in the nature of Mandamus to compel the Respondent to alter the adjudication records and return land plot No. 160 to the ex-parte applicant as initially registered in the records.
3. That this honourable court do grant the ex-parte applicant an order of judicial review in the nature of prohibition to prohibit the respondent from any way interfering with the ex-parte applicant land plot NO. 160 Mariani Adjudication section.

The application is supported by the statement of facts and the verifying affidavit dated 10.4.2007.

The 1st Respondent opposes the same by way of grounds of opposition dated 16.10.2014 and filed on 31.10.2014.

The interested party did file his affidavit dated 4.5.207 setting the stage to hearing of this application.

ON THE FACTS AND THE LAW APPLICABLE

Your ladyship, the applicant was a defendant in objection No. 1128 over plot No. 160 Mariani adjudication section in Meru south adjudication area (see the typed proceedings filed on 16.7.2012 and handwritten copies forming annexure DNK1).

The hearing commenced on 24.5.2006 before one A.Khaemba the Land Adjudication officer.

It is not in dispute that A.Khaemba took the evidence of the witnesses when the hearing was adjourned later on the same day (see handwritten proceedings at page 12).

Later my lord, one Daniel Mutuku did the findings and delivered his decision on 29.9.2006 in his capacity as the Land Adjudication Officer.

These events are agreed upon by the parties that the person who heard them is not the one who wrote the decision.

(i) Procedural Ultra vires

My lord, the applicant submits that the procedure in the conduct of proceedings before the Land Adjudication Officer was flawed in the manner the proceedings were conducted. The predecessor to Kahemba, Mr.Mutuku did not have the opportunity to see the witnesses, access their demeanor and make a conclusion thereof.

Objection proceedings my lord are in the nature of Civil Proceedings and common law dictates that in such instances, the new umpire should as a matter of procedure inform the parties of their right to be heard afresh or to forego that right and the officer do write a decision based on the record. This was not done dealing a blow to the right to a fair hearing.

I submit that there was procedural ultra vires. When a body is authorized to take a task by the law herein being the Land Adjudication Act Cap 284 then the law or common law imposes a duty to such body to follow a procedure that is fair, just and not arbitrary as the case herein. My lord where this happens then this court has a duty to call up and quash the ensuing decision.

Your lordship even where no procedure is explicitly prescribed in the Act the common law rules of natural justice and the universal demands of due process and fair play will ordinarily be implied and applied in decision making.

My lord this is what happened in this case. The predecessor herein did not appreciate the facts of this case having not heard the parties herein.

CONCLUSION

Your lordship, the applicant has proved on a balance of probability that he deserves the orders sought.

Allow the motion with costs to the ex-parte applicant.

DATED AT MERU THIS 27TH DAY OF NOVEMBER, 2017

FOR: M/S MUIA MWANZIA & CO.

ADVOCATES FOR THE APPLICANT

B. RESPONDENT'S SUBMISSIONS

May it please your Lordship.

We submit on behalf of the Respondent as follows:

The ex-parte applicant filed Notice of Motion dated 10th April, 2007 seeking for orders of certiorari, mandamus and prohibition against the decision of the Land Adjudication Officer Mariani Adjudication Section dated 29th September, 2006.

Your Lordship, we submit that Judicial Review Orders are discretionary. We further submit that Judicial Review (sic) concerned with decision making process and not the merits of the case.

Your Lordship, the ex-parte applicant in his Notice of Motion states that the respondent was heard. In objection 112 by Mr. Khaemba and later another officer took over one Mr. Mutuku. The later (sic) officer made a decision by making his findings.

We submit that both officers were Land Adjudication Officers mandated and authorized by law to hear objection proceedings. If a government officer is transferred from one office to another, there is always a replacement. This is what happened in this case. The Land Adjudication Officer was competent to take over and make the findings.

Your Lordship, we submit that the ex-parte applicant is challenging the merits of the decision of the Land Adjudication Officer and not the decision making process as required.

Your Lordship, paragraphs 6 and 7 of the statement of facts accompanying application for leave dated 10th April, 2007 the ex-parte applicant mentions interested party (sic) witnesses who he says testified at the hearing. This is an indication that parties were allowed to call their witnesses/ (sic) our Lordship, on this note we submit that the ex-parte applicant was given a fair hearing. The Respondent allowed parties to call their witness. The Respondent thus cannot be condemned for not giving parties a fair hearing.

Your Lordship, in order to succeed in an application for Judicial Review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety...illegality is when the decision making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality. It is, for example, illegality, where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission...irrationality is when there is such gross unreasonableness in the court is not (sic) reasonable imitation of the truth and is not reasonably intelligently contrived. I wish people who tell lies before me would respect my grey hair even if they consider that my intelligence is not of high order (?). I wish the witness had not told me the most stupid of his lies, which both disappointed and made me, feel intellectually insulted (?). In this case the ex-parte has failed to show that.

Your Lordship, we submit that the application dated 10th April, 2007 is an abuse of court process, its (sic) vexatious and cannot stand as the rules of natural justice were adhered to. We submit that the Respondents proceeded with the hearing of the objection as provided by Cap 284 Laws of Kenya thus the application for orders of Judicial Review should be dismissed with costs.

Your Lordship, in support of our submissions, we rely on the case of **Republic –vs- Mount Kenya University & Another 2017 [2017] eKLR (copy annexed.)**

Your Lordship, we pray that you do find that the ex-parte applicant (sic) application is unmerited and dismiss the same with costs to Interested party.

This is our humble prayer and submissions.

We so pray.

DATED AT MERU THIS 27TH DAY OF FEBRUARY, 2018

J. M. KIONGO,

SENIOR LITIGATION COUNSEL,

FOR: HON. ATTORNEY GENERAL &

DEPARTMENT OF JUSTICE.

C. INTERESTED PARTY'S SUBMISSIONS

May it please your Lordship

I Benson Nchunge Kujoga submit on my behalf as follows:

The ex-parte applicant filed Notice of Motion dated 10th April, 2007 seeking for orders of certiorari. Mandamus and prohibition against the decision of the Land Adjudication Officer Mariani Adjudication Section dated 29th September, 2006.

Your Lordship, I Benson Nchunge Kujoga submit that Judicial Review Orders are discretionary. I Benson Nchunge Kujoga further submit that Judicial Review (sic) concerned with decision making process and not the merits of the case.

Your Lordship, the ex-parte applicant in his Notice of Motion states that the respondent was heard. In objection 112 by Mr. Khaemba and later another officer took over one Mr. Mutuku. The later (sic) officer made a decision by making his findings.

I Benson Nchunge Kujoga submit that both officers were Land Adjudication Officers mandated and authorized by law to hear objection proceedings. If as Government officer is transferred from one office to another, there is always a replacement. This is what happened in this case. The Land Adjudication Officer was competent to take over and make the findings.

Your Lordship, I Benson Nchunge Kujoga submit that the ex-parte applicant is challenging the merits of the decision of the Land Adjudication Officer and not the decision making process as required.

Both the applicant and the respondents called their witnesses (sic) they were heard and the case was determined.

Your Lordship, paragraph 6 and 7 of the statement of facts accompanying application for leave dated 10th April, 2007 the ex-parte applicant mentions interested party (sic) witnesses who he says testified at the hearing. This is an indication that parties were allowed to call their witnesses/ (sic) our Lordship, on this note we submit that the ex-parte applicant was given a fair hearing. The Respondent allowed parties to call their witness. The Respondent thus cannot be condemned for not giving parties a fair hearing.

Your Lordship, I Benson Nchunge Kujoga submit that the application dated 10th April, 2007 is an abuse of court process. Its (sic) vexatious and cannot stand as the rules of natural justice were adhered to. We submit that the Respondents proceed (sic) with the hearing of the objection as provided by cap 284 Laws of Kenya thus the application of orders of Judicial Review should be dismissed with costs.

Your Lordship, I pray that you do find that the ex-parte applicant (sic) is unmerited and dismiss the same with costs to interested party.

That is my humble prayer and submissions.

I so pray.

DATED AT CHUKA THIS 28TH DAY OF FEBRUARY, 2018

BENSON NCHUNGE KUJOGA

INTERESTED PARTY

4. From the pleadings and submissions, a concise statement of the case is that:

a) The exparte applicant says that he deserves the orders sought because the apposite objection was heard by a Land Adjudication Officer called A. Khaemba and that findings and the ultimate decision was made by a Land Adjudication Officer called Daniel Mutuku, who did not have an opportunity to hear the parties. He says that no person acting judicially and properly seized of the matter could have arrived at the determination which was finally made. He says that the decision of the Respondent was unreasonable in the circumstances of the evidence adduced in the objection. He submits that fair hearing was jeopardized.

b) The Respondent submits that the court should dismiss the suit with costs. He proffers the case of Republic versus Mount Kenya University, [2017] eKLR as an authority that buttresses his assertions.

c) The Interested Party, by and large, supports the Respondents assertions. He says that it is right for an officer who replaces a transferred officer to make findings and a decision on a matter heard by the transferred officer. He opines that the two officers who dealt with the objection were both adjudication officers who had jurisdiction to hear and determine the objection. They submit that if a government officer is transferred, his or her replacement has the authority to handle the issue. The respondent also submits that the exparte applicant and his witnesses were accorded a fair hearing by the officer who heard the objection. He argues that the ex-parte applicant is challenging the merits of the decision of the Land Adjudication Officer and not the decision making process. He also says that the parties and their witnesses were all accorded a fair hearing. He continues to say that the respondent proceeded with the hearing of the objection in the manner provided by Cap. 284 Laws of Kenya, and for this reason, the exparte applicant's application for orders of Judicial Review should be dismissed with costs.

5. I frame the issues for determination as follows:

a) Was it procedurally right for an officer who did not hear an objection to rely on evidence recorded by a transferred officer to make findings and a determination predicated on evidence he had not heard?

b) Depending on this court's finding concerning (a) above, are the orders prayed for by the exparte applicant tenable?

6. The disputants in this suit are in agreement that the officer who heard the apposite objection was not the officer who made findings and a determination in the objection. From the pleadings, it is clear that the parties were not offered an opportunity to examine the record of proceedings made by the transferred officer which would have allowed them to decide if or if not they were in favour of the matter being started de novo or proceeding from where it had stopped. Or perhaps they would have moved the new Land Adjudication Officer to refer the matter to the transferred officer who had concluded the hearing of the objection so that he could make the apposite findings and the consequent determination.

7. I do not agree with the Respondent that rules of natural justice were observed to the extent that the procedural integrity of the decision making process can be seen to have not been impeached. I also do not agree with the Interested Party that the exparte applicant is challenging the merits of the decision made by the Land Adjudication Officer rather than the decision making process. It is pellucid that the exparte applicant is challenging the integrity of the decision making process in that the impugned decision was made by an officer other than the one who heard the objection without offering the parties an opportunity to decide if or if not the apposite hearing would commence de novo.

8. I do find that an order of certiorari to bring up and quash the decision of the respondent dated 29th September, 2006 pursuant to objection No. 1128 lodged by the Interested Party is meritorious. An order of certiorari is hereby issued.

9. I find no basis for issuing orders of Mandamus and prohibition as prayed for by the exparte applicant. This is because the impugned

objection was not properly heard and determined. It is ordered that an Adjudication Officer, other than the two officers who handled the impugned objection, hears and determines the apposite objection afresh.

10. Parties are ordered to bear their own costs.

Delivered in open court at Chuka this **14th day of May, 2018** in the presence of:

CA: Ndegwa

Mokua h/b Mwanzia for the Ex-parte Applicant

Kiongo for the Respondent

P. M. NJOROGE,

JUDGE.

8. This court notes that this is the 2nd JR suit involving the same litigants and the same subject matter. The first one was Chuka JR 04 of 2017 (Formerly Meru Miscellaneous Application No. 4 of 2017 and Formerly Nairobi Miscellaneous Application No. 306 of 2007). Judgment in this suit was delivered by this court on **14th May, 2018**.

9. I have carefully considered the pleadings and the submissions proffered in this matter. Without hesitation, I do find that the applicant is challenging the merits of the DLASO's decision and not the decision making process thereof. The issues raised by the applicant are beyond the purview of Judicial Review proceedings. This comes out pellucidly through the applicant's verifying affidavit which is unequivocal that the parties were heard but he does not agree with the decision made by the Land Adjudication Officer. I also note that the applicant did not exhaust the available statutory dispute settlement mechanism.

10. In the circumstances, I find that this application lacks merit and it is ordered as follows:

a) This application is hereby dismissed.

b) Costs are awarded to the Interested Party.

Delivered in open Court at Chuka this 2nd day of October, 2019 in the presence of:

CA: Ndegwa

Kirimi Muturi present for the Applicants

Desiderio Nkonge – Interested Party - Present

P.M. NJOROGE

JUDGE