



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. JUDICIAL REVIEW NO. 54 OF 2018

REPUBLIC.....APPLICANT

VERSUS

DEPUTY COUNTY COMMISSIONER

KITUI WEST SUB-COUNTY.....1ST RESPONDENT

MUTAVA KITEMA.....2ND RESPONDENT

AND

EX-PARTE APPLICANT:.....NYIVA KITEMA WANGOMBE

JUDGMENT

1. In the Notice of Motion dated 30th November, 2018, the Ex-parte Applicant has prayed for the following orders:

a. An order of mandamus to remove into this Honourable Court and compel the 1st Respondent to review his decision made on or about 5th November, 2017 proposing the sub-division of the Ex-parte Applicant's property known as Parcel No. 600 Musengo Adjudication Section herein after referred to as "the suit property) in order to award part of it to the 2nd Respondent.

b. An order of prohibition directed at 1st and 2nd Respondents (the Respondents) to prohibit the Respondents, their officers and/or any other authority acting on their instructions from evicting or from taking any action on the suit property in any manner that interferes with the Ex-parte Applicant's quiet possession of the suit property.

2. The Notice of Motion is supported by the Affidavit of the Ex-parte Applicant who has deponed that she is the registered and legal owner of parcel number 600 Musengo Adjudication Section (*the suit property*) which he got from her deceased's husband, Kitema Wangombe; that she took possession of the land after the Land Adjudication Committee made a Ruling in her favour in 1984 and that although the 2nd Respondent was to file an Appeal to the Minister within 60 days, he only did so in the year 1991.

3. The Ex-parte Applicant deponed that she has lived on the suit property continuously since 1984; that on 5th November, 2015, the 1st Respondent ruled that the suit property should be sub-divided between himself and the 1st Respondent and that the 2nd Respondent's decision has been marred by unreasonable delays.

4. The Ex-parte Applicant finally deponed that the 1st Respondent did not consider his submissions; that the 1st Respondent did not give him a fair hearing and that Article 40 provides that every person has the right to acquire and own property.

5. Although the Respondents were served with the Application, they did not file responses. The Application therefore proceeded as an undefended action.

6. The Ex-parte Applicant's advocate submitted that the 1st Respondent failed to consider relevant and material facts in reaching at the impugned decision; that the decision of the 1st Respondent was irrational and unreasonable and that the 2nd Respondent took seven (7) years to file the Appeal with the 1st Respondent. Counsel relied on numerous authorities which I have considered.

7. The evidence before me shows that on 17th October, 1984, the 2nd Respondent filed an objection before the Land Adjudication Officer in respect of plot number 600. In the said proceedings, the Ex-parte Applicant herein was the Defendant. The 2nd Respondent's Objection was dismissed by the Land Adjudication Officer on 17th October, 1984.

8. The Ex-parte Applicant is seeking for an order quashing the decision of the 1st Respondent vide a Judgment dated 5th November, 2015. Other than the Judgment in Appeal Case No. 17 and 18 of 1991 between the 2nd Respondent and the Ex-parte Applicant, the proceedings of the 1st Respondent are not before the court.

9. The Ex-parte Applicant has asserted that although the Land Adjudication Officer delivered his decision on 17th October, 1984, it was not until 1991 that the 2nd Respondent filed an Appeal. The Respondents have not denied this assertion.

10. Section 29(1) (a) and (b) of the Land Adjudication Act provides as follows:

“(1) Any person who is aggrieved by the determination of an objection under section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by—

(a) delivering to the Minister an appeal in writing specifying the grounds of appeal; and

(b) sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.”

11. The 2nd Respondent was required to file an Appeal against the decision of the Land Adjudication Officer dated 17th October, 1984 within sixty (60) days.

12. Although there are no records to show when the Appeal before the 1st Respondent was filed, the case number (*Appeal No. 17 and 18 of 1991*) clearly shows that the Appeal was filed in the year 1991, seven (7) years after the decision of the Land Adjudication Officer was made.

13. In the case of *Austine Kihara Warema vs. George Gituku Nyamu (2015) eKLR*, the court held that if the decision of the District Tribunal is adopted after the time reserved for Appeal is over, then the Appeal's Tribunal would clearly lack jurisdiction to entertain the Appeal.

14. Considering that the statutory timelines within which the Appeal was to be filed was not complied with, I find and hold that the 1st Respondent's decision of 25th November, 2015 was made without jurisdiction.

15. For those reasons, I allow the Ex-parte Applicant's Notice of Motion dated 30th November, 2018 as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 1ST DAY OF NOVEMBER, 2019.

O.A. ANGOTE

JUDGE