



REPUBLIC OF KENYA

IN THE LAND AND ENVIRONMENT COURT AT CHUKA

MISC JUDICIAL REVIEW APPLICATION NO E007 OF 2021

**IN THE MATTER OF AN APPLICATION BY JOHN MBIRI NJAGI FOR LEAVE TO
COMMENCE PROCEEDINGS FOR AN ORDER OF CERTIORARI AND PROHIBITION**

AND

IN THE MATTER OF ARTICLE 23(3)(F), 40 48 & 50 OF THE COSTITUION OF KENYA

AND

IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT 2015

AND

IN THE MATTER OF LAND PARCEL NO.931 KAMANYAKI/KAMARANDI ADJUDICATION SECTION

AND

**IN THE MATTER OF AN APPEAL TO THE MINISTER IN CHARGE OF LANDS AND
PHYSICAL PLANNING CASE NO,101 OF 2018 AND IN THE MATTER OF THE LAND**

ADJUDICATION ACT CAP 284 LAWS OF KENYA

AND

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

BETWEEN

JOHN MBIRI NJAGI.....APPLICANT

VERSUS

THE CABINET SECRETARY

MINISTRY OF LANDS & PHYSICAL PLANNING..1ST RESPONDENT

THE DIRECTOR OF LAND

ADJUDICATION & SETTLEMENT.....2ND RESPONDENT

THE CHIEF LAND REGISTRAR.....3RD RESPONDENT

THE ATTORNEY GENERSL OF KENYA.....4TH RESPONDENT

AND

JOSEPH KAGUURA MBUGI.....INTERESTED PARTY

RULING

1. This application seeks the following orders:

1. THAT leave do issue for the applicant to apply for;

(a) An order of Certiorari to remove to this court and quash the decision/judgment /ruling and or award by the 1st respondent in respect of land parcel no 931 Kamanyaki/Kamarandi Adjudication Section(sic) in minister appeal case no.101 of 2018 which is undated but read over to the exparte applicant and the interested party on 15th March 2021.

(b) An order of PROHIBITION , prohibiting the 2nd and 3rd respondents from; implementing or putting into effect the decision/judgment/ruling/award of the minister (not dated but read over to the exparte applicant and the interested party on 15th march 2021) IN THE appeal to the minister no.101 of 2018 in respect of parcel no.931 Kamanyaki/Kamarandi Adjudication Section (Sic) , pending the hearing and determination of the instant judicial review application.

(c) The leave granted herein do operate as a stay of the execution of the decision /judgment/ruling/ award of the minister which is undated but read over to the exparte applicant and the interested party on 15th march 2021 in the appeal to the minister appeal no.101 of 2018 in respect of land parcel no. 931 Kamanyaki/Kamarandi Adjudication Section(SIC) .

(d) The Costs of the application be provided for.

2. This application is buttressed by the verifying affidavit of John Mbiri Njagi, the exparte applicant sworn on **11th May, 2021**, which states:

I, **JOHN MBIRI NJAGI**, of P O Box 90188 Mombasa within the Republic of Kenya do make oath and state as follows;

1. That I am the applicant in this matter with the knowledge of the facts attending to this case hence I am competent enough to swear this affidavit.

2. That I have read and understood the application attached hereto and find the same to be correct.

3. That these proceeding intend to challenge the decision of the 1st respondent which condemned the applicant to lose his land that was a share given by his clan KamurigeNthimbu which clan had caused the adjudication of the suit land as a block and shared it out to members ,vide undated ruling of the minister but delivered on 15th March 2021 .***(attached herein and marked J.M.N1 is a copy of the award/Ruling)***

4. That the notice for appeal issued to me was short as the appeal was slated for hearing on 17TH November 2020 and I was telephoned by the local chief on 14th November 2020 informing me that the appeal was slated for hearing on 17th November 2020***(annexed hereto is the copy of notice marked J.M.N 2).***

5. That I do confirm that in 2008,I wron the 60 days objection , against the interested party and as a result he appealed to the minister but belatedly and without leave ***(annexed hereto is the copies of proceeding and ruling in AR proceeding marked J.M.N 3).***

6. That I contend that the appeal to the minister was filed out of time and without leave of the court granted that AR Objection regarding parcel no.931 was delivered on 13th May 2009, copy of registers regarding parcel no.931 opened on 2014 (appeal to the minister by this time had not been filed) and the appeal was filed in 2018 ***(annexed and marked J.M.M 3 a and b is the green card and official search of parcel no.931 KAMANYAKI/KAMARANDI).***

7. That I contend that the interested party did not challenge me during the hearing in committee and arbitration board where ownership in adjudication section is determined.

8. That the minister failed to find out that parcel no.931 Kmarandi/kamanyaki/adjudication section had been registered and a title deed issued by the time the appeal to the minister was lodged in 2018 and the title deed is now held by the land registrar Meru South /Maara Sub counties.

9. That my land and that of the interested party share a common boundary and these two parcels of land were shares given to us by our clan namely KamuringeNthimbu who had walked the boundaries of a big block and later distributed to its members of the clan including those who were living on the block but were not members of the same clan.

10. That the interested party respondent does not live on the disputed land and he has only authorized and directed his brother to enter into the suit land so that the interested party and his family can claim the land.

11. That I am weary that unless my prayers hereto are allowed , my family, those who claim the land through me as I hold the land

intrust for my siblings shall suffer irreparable loss and be rendered destitute.

12. That I have instructed the firm of M/S I.C MUGO& CO ADVOCATE to pursue this matter on my behalf to its full logical conclusion.

13. That I confirm that there is no other pending suit nor have been there any previous proceeding in any court between the parties herein with regard to this cause of action.

14. That I verily believe that the interests of justice would be better served by the decision issued by the minister which is undated but delivered on 15th March 2021 being quashed.

15. That what is deposed herein is true to the best of my knowledge, belief and information, save where otherwise stated in which case the source and grounds of belief are disclosed.

3. The application is also further buttressed by the statutory statement filed by the Firm of I.C. Mugo, the applicant's advocate which states as follows:

STATUTORY STATEMENT

(pursuant to Order 53 rule 1 and 2 of the civil procedure rules 2010)

(1) NAMES AND DESCRIPTIONS OF APPLICANT

1. The applicant is a Kenyan adult of sound mind residing and working for gain at Mombasa Within Mombasa County (Applicant's address of service for the purpose of this suit shall be care of M/S I.C MUGO & CO ADVOCATE of P.O BOX 380 CHUKA.

2. The interested party is an adult male of sound mind residing and working in Kwale county , but a resident of Kiungu Village, Kamarandi Sublocation , Kamarandi Location in Tharaka south sub county C/O P.O BOX 72 MARIMANTI.

3. The 1st, 2nd , 3rd and 4th respondent are the minister THE CABINET SECRETARY MINISTRY OF LANDS & PHYSICAL PLANNING, THE DIRECTOR OF LAND ADJUDICATION, THE CHIEF LAND REGISTRAR AND THE ATTORNEY GENERAL OF KENYA who are sued on that behalf as civil servant of the republic of Kenya.

1. GROUNDS ON WHICH THE RELIEF ARE SOUGHT

(a) That the decision /judgment/ruling/award of the minister (undated) but read over on 15th march 2021 in relation to parcel no.931 KAMAYAKI/KAMARANDI/ADJUDICATION SECTION(sic) was made without jurisdiction.

(b) The appeal to the minister was rendered nugatory null and void for all intent and purpose given that by the time the appeal was heard parcel no.931 KAMANYAKI/KAMARANDI/ADJUDICATION SECTION(sic) had been registered and title deed issued to that effect.

(c) That the appeal to the minister was time barred and no leave was sought from the court to file the appeal out of time.

(d) That the decision by the minister was undated.

(e) That the minister entertained a hearing on appeal instead of analyzing and interrogating the evidence already on record (the decision of DLASO appealed against).

(f) That the minister entertained new evidence by the appellant which was contradictory to his evidence before DLASO in objection no 11 of 2008 a fact that was not noted by the minister.

(g) The minister did not visit the suit land as he had intimated before the commencement of the hearing.

(h) That the minister gave the ex parte applicant a very short time within which to prepare for the appeal granted that the local chief informed him over the phone of the hearing of the appeal on 14th November 2020 when the appeal was slated for hearing on 17th November 2020.

(i) That the interested party only came to the picture during the AR Objections and when he lost he preferred the appeal no.101 of 2018 , after the title deed to LR.KAMANYAKI/KAMARANDI/931 had already been issued.

(j) That the interested party claim is for land parcel KAMANYAKI/KAMARANDI/931 which is the legally and lawfully acquired property of the ex parte applicant.

(k) That parcel no.931 KAMANYAKI /KAMARANDI adjudication section was adjudicated as a big block by Kamuringenthumbu(clan) shared the same to clan members and those non members residing on the block and the interested party

was given his share out of the big block.

(l) That the interested party has never occupied nor made use of parcel no.931 KAMANYAKI/KAMARANDI ADJUDICATION SECTION .

(m) That the interested party as only sent his brother JAMES NJERU to enter encroach and trespass into 931/KAMANYAKI/KAMARANDI ADJUDICATION SECTION , he use him as aprior to claim the land.

(n) That in his findings the 1st respondent is openly biased as he tries to justify the indolence shown by the interested party of his failure to raise an objection at committee objection where ownership of land is ascertained in adjudication area.

(o) That no objection was ever raised against the exparte applicant or anyone claiming through him after demarcation.

(p) That the 1st respondent who was represented by the deputy county commissioner never set foot on parcel no.931 Kamanyaki/Kamarandi adjudication section to prove or disapprove the interested party claim and applicant claims as avisit on the suit land clearly would have proved that the interested party does not reside nor use LR.KAMANYAKI/KAMARANDI/931.

(q) That the award to the interested party of the entire land parcel no.931Kamanyaki/Kamarandi was flawed, unjust and irregular as the 1st respondent failed to consider material facts in his ruling.

(r) That the 1st respondent acted in bad faith when he convened a hearing on the 17th November 2020 without paying due regard to the fact that Late service was effected upon the exparte applicant who was residing and working for gain at Mombasa.

(s) That the 1st respondent abused his powers by awarding the interested party the parcel of land no.931 and not only rendered the exparte applicant and all those claiming through him landless , and did not consider that the applicant herein terms the land as share from his clan and the interested party had his own share.

(t) That the 1st respondent , abused his powers by awarding the interested party the parcel of land no.931 Kamanyaki/Kamarandi without considering any material evidence only oral statements of witnesses adduced by the interested party and totally disregarding the applicant protest that has never had a case against the interested party at commencement of objections at base levels of committee nor board whereof issues of ownership were canvassed.

2. RELIEF SOUGHT.

THAT leave do issue for the applicant to apply for

(e) An order of Certiorari to remove to this court and quash the decision/judgement /ruling and or award by the 1st respondent in respect of land parcel no 931 Kamanyaki/KamarandiAdjudication Section(sic) in minister appeal case no.101 of 2018 which is undated but read over to the exparte applicant on 15th march 2021.

(f) An order of PROHIBITION , prohibiting the 2nd and 3rd respondents from; implementing or putting into effect the decision/judgment/ruling/award of the minister (not dated but read over to the exparte applicant and the interested party on 15th march 2021 , pending the hearing and determination of the instant judicial review application.

(g) The leave granted herein do operate as a stay of the execution of the decision /judgment/ruling/ award of the minister which is undated but read over to the exparte applicant and the interested party on 15th march 2021 in the appeal to the minister appeal no.101 of 2018 in respect of land parcel 931 KAMANYAKI/KAMARANDI ADJUDICATION SECTION(SIC) .

(h) The Costs of the application be provided for.

4. At the exparte stage, the applicant's advocate told the court that the applicant wished to arrest the implementation of the impugned decision as it would render him landless if implemented. He also prayed that leave granted in this matter operates as a stay of execution of the said decision.

5. I find the application is at this exparte stage meritorious.

6. The following orders are issued:

a) Prayers 1a, 1b and 1c are granted.

b) Costs shall be in the cause.

DELIVERED IN OPEN COURT AT CHUKA THIS 17TH DAY OF MAY, 2021 IN THE PRESENCE OF:

CA: Ndegwa

I.C. Mugo for the applicant

P. M. NJORGE,

JUDGE.