



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

MISCELLANEOUS CIVIL APPLICATION NO. JR. E8 OF 2021

IN THE MATTER OF THE LAND ADJUDICATION ACT CAP 284 OF THE LAWS OF KENYA

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION OF

THE DECISION OF THE DISTRICT COMMISSIONER BONDO ACTING

AS A DELEGATE OF THE MINISTER PURSUANT TO SECTION 29

OF THE LAND ADJUDICATION ACT CAP 284 OF THE LAWS OF KENYA

IN APPEAL CASE NO. 236 OF 2007 ON PARCEL NO. 2410 NYANGOMA/

UYAWI ADJUDICATION SECTION

AND

IN THE MATTER OF AN APPLICATION BY

REPUBLIC.....APPLICANT

VERSUS

DISTRICT COMMISSIONER ACTING AS A DELEGATE OF THE MINISTER UNDER

SECTION 29 OF THE LAND ADJUDICATION ACT CAP 284 OF KENYA.....RESPONDENT

AND

LOYCE ADOYO ORANYA.....INTERESTED PARTY

WALTER OMBENG OKELLO.....EXPARTE APPLICANT

RULING

Walter Ombeng Okello hereinafter referred to as exparte applicant has come to this court praying for orders that the court be pleased to grant leave to the applicant to apply for judicial review orders of Certiorari, Mandamus and Prohibition in respect of the decision by the minister that was issued in appeal No. 236 of 2007 in regards to land parcel yangoma/Uyaw/2410 on 12.11.2021. The grant of leave do operate as a stay of further proceedings in respect of the appeal decision that was issued in appeal No. 236 of 2007 in regards to land parcel Nyangoma/Uyaw/2410. The costs for this application. The application is based on grounds that there are gross errors of procedure quite apparent on the face of the record and that the minister considered extraneous and irrelevant evidence from witnesses. The minister failed to consider the evidence on record wholly and impartially to the detriment of the applicant. The minister failed to follow the procedure as is laid down by law. The decision of the minister if implemented would be an injustice and detrimental to the applicant as this would deny him his

right to own property.

In the statement, the ex parte applicant prays for an order of certiorari to remove to the Land & Environment Court of Kenya at Kisumu to set aside the decision of the Minister through the Bondo District Commissioner made on 12th November 2020 in respect of land parcel number 2410 Nyangoma/Uyawi Adjudication Section in a dispute between the applicant and the interested party herein and to quash the same. An order of mandamus compelling the Minister to award the parcels of land to the applicant; WALTER OMBENG OKELLO herein. An order of prohibition directed at the Minister prohibiting him from implementing the decision of made on 12th November 2020 in whatever manner through the Land Adjudication and the Chief Land Registrar or any other person acting on that behalf in respect of Nyangoma/Uyawi Adjudication section 2410. That the grant of leave do operate as a stay of further proceeding in respect of land parcel Nos. Nyangoma/Uyawi/2410 and the interested party be ordered to keep off the said piece of land and/or maintain status quo before the decision of the minister on 12th November till the determination of this application or until further orders of the court. That costs of this suit be to the Applicant.

The grounds of the application are that the Deputy County Commissioner purporting to be a delegate of the Minister erred in law and acted in excess of powers conferred to him by Section 29 (1) of the Act by entertaining fresh verbal evidence from the parties in effect causing a great injustice as he was not able to comprehend the complexity of the lies peddled by the interested party.

The Minister failed to appreciate that the interested party was only after the beach plots and despite several attempts being made to merge all the parcels of land that had been erroneously subdivided from Nyangoma/Uyawi/2405, he still went ahead to overlook the fact that in dismissing the appeal, he would be causing an injustice upon the Applicant.

The Deputy County Commissioner Bondo acting as a minister overstepped his jurisdiction by entertaining an appeal in respect of Nyangoma/Uyawi/Adjudication 2410 without having all the evidence that had been adduced at the objection stage. The Deputy County Commissioner acting as a minister failed to appreciate the laid down procedure in law and overlooked the grounds of appeal raised by the applicant and proceed to pronounce himself on none existent objection proceedings. The file with the initial objection proceedings had gone missing for over 8 years and the same file was not presented to the Deputy County Commissioner during the hearing of the appeal case hence the very scanty proceedings availed to the Applicant when he appealed for the proceedings.

The Deputy County Commissioner acting as a minister failed to appreciate all the evidence and decisions tabled before him in rewards Nangoma/Uyawi/2405 which is the root of all the objections in regards to adjudication of the said parcel of land. The Deputy County Commissioner failed to appreciate as a whole the evidence and the findings of the arbitration board as the same succinctly gives the history of the land in question and would guide one not to occasion any injustice upon a party.

The Deputy County Commissioner acting as a delegate of the Minister failed to consider the evidence contained in the objection that gave rise to the appeals. This is because the original file that contained the appeal herein could not be traced to begin with hence there were no records.

The Deputy County Commissioner acting as a minister relied on extraneous evidence of the objection proceeding in arriving at his decision. He failed to analyze and consider the evidence that was to be tabled before him as a whole hence occasioning a great injustice on the Applicant.

That there are avalanche of errors apparent on record and serious procedural errors in the filing and conduct of the entire adjudication and the appeal process.

In sum total, the purported minister acted ultra vires his powers conferred by the Land Adjudication act Cap 284 Laws of Kenya, there were a plethora of procedural irregularities, extraneous matters were considered practicality of implementing decision was ignored there was manifest impartiality and outright deceit in conduct of the exercise.

In the replying affidavit, the interested party states that in 1987 there was a demarcation in the region and the Land adjudication officers gave Walter Ombeng Okello plot No. 2405 Nyangoma/Uyawi. In 1987 after the award of the said Parcel of land was given to Walter Ombeng Okello the adjudication officers came back later and found that it was Martin Oloo who was the one tilling the area and gave orders that the status quo to remain. That later on in 1987 Martin Oloo sued Walter Ombeng Okello before the land committee he won the case and was given the Parcel No. 2405.

On 12th May 1988 after the land committee gave its ruling the Applicant herein filed an appeal on the Arbitration Board and the case was ruled in Martin Oloo's favour.

The arbitration board decided that there be a subdivision on Parcel No. 2405 because there was a tsetse fly control project in the land parcel donated by Martin Oloo's father. Parcel no. 2405 was left for Walter Ombeng Okello as the tsetse fly camp was given 2409. The other parcels of land that were created were parcels no. 2410 which was given to the interested party as parcel nos. 2407 and 2712 were given to Martin Oloo. That the applicant being dissatisfied with the findings of the board made an appeal to the Minister vide Appeal No. 237 of 2007. On 4th November 2020 the case was determined and it was ruled in favour of the interested party. The interested party prays that the applicant's application for leave should be dismissed with costs.

I have considered the application and submissions on record and do commence by holding that at this stage the court's duty is to find out whether the applicant has established a case that can go for trial. In this instance the applicant has to demonstrate that he has sufficient interest in the matter and that he is affected by the decision being challenged and that he has an arguable case with reasonable chances of success and that the decision was made by a public body established by statute or otherwise exercising public function.

In this case, the ex parte applicant was a party in the appeal no. 236 of 2007 in respect of land parcel number Nyangoma/Uyawwi/2410 and therefore has locus standi to file Judicial Review application.

The ex parte applicant was affected by the decision by the respondent that was made in respect of Land Parcel number Nyangoma/Uyawwi/2410.

Moreover, that the decision was made by a public body being the District Commissioner acting as a delegate of the Minister under Section 29 of the land Adjudication Act Cap 284 Laws of Kenya. The upshot of the above is that the ex parte applicant has satisfied this court that he is entitled to the orders sought and therefore I do grant leave in terms of prayers 2 thus **the applicant to apply for judicial review orders of Certiorari, Mandamus and Prohibition in respect of the appeal decision by the minister that was issued in appeal No. 236 of 2007 in regards to land parcel Yangoma/Uyawwi/2410 on 12.11.2021.**

I do grant prayer 3 thus **the grant of leave does operate as a stay of further proceedings in respect of the appeal decision that was issued in appeal No. 236 of 2007 in regards to land parcel Nyangoma/Uyawwi/2410. The Notice of Motion to be filed within 21 days.** Costs to the applicant.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 25th DAY OF NOVEMBER, 2021

ANTONY OMBWAYO

JUDGE

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2020.

ANTONY OMBWAYO

JUDGE