



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT**

**AT KILGORIS**

**JUDICIAL REVIEW CASE NO.1 OF 2021**

**IN THE MATTER: ARTICLE 165 (6), 169 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF AN APPLICATION FOR**

**JUDICIAL REVIEW FOR ORDERS OF CERTIORARI AND PROHIBITION**

**AND**

**IN THE MATTER OF:**

**AN APPLICATION BY MATAMPASH OLE SAIRE & SITATO OLOLMAMPULI IKOLET**

**FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI AND PROHIBITION**

**AND**

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

**AND**

**IN THE MATTER OF: THE LAND ADJUDICATION, CAP 284 LAWS OF KENYA**

**AND**

**IN THE MATTER : FAIR ADMINISTRATION ACTION ACT**

**AND**

**IN THE MATTER OF : ORDER 53 OF THE CIVIL PROCEDURE RULES 2010**

**REPUBLIC.....APPLICANT**

**-BETWEEN-**

**MATAMPASH OLE SAIRE &**

**SITATO OLOLMAMPULI IKOLET.....EX-PARTE APPLICANTS**

**VERSUS**

**LAND ADJUDICATION OFFICER, TRANSMARA EAST.....1<sup>ST</sup> RESPONDENT**

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

THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT.....3<sup>RD</sup> RESPONDENT

AND

OTUMA OLE SANINGO.....1<sup>ST</sup> INTERESTED PARTY

PAREYIO OLE MOITA.....2<sup>ND</sup> INTERESTED PARTY

KOKWET OLE KUNINI.....3<sup>RD</sup> INTERESTED PARTY

TATUR OLE KILOYIAN.....4<sup>TH</sup> INTERESTED PARTY

YIANTO OLE SEYIO.....5<sup>TH</sup> INTERESTED PARTY

DAVID PASEI SIMPIRI.....6<sup>TH</sup> INTERESTED PARTY

SOITANAE OLE KINANTA.....7<sup>TH</sup> INTERESTED PARTY

SOIPEI VINCENT KISEET.....8<sup>TH</sup> INTERESTED PARTY

OLOIMUTIE OLE MAMAYIO.....9<sup>TH</sup> INTERESTED PARTY

JOEL LETUYA RAKITA.....10<sup>TH</sup> INTERESTED PARTY

MAKUTIT JOEL MELUBO.....11<sup>TH</sup> INTERESTED PARTY

LENKIYIEU OLE NAIDUYA.....12<sup>TH</sup> INTERESTED PARTY

OLEUNUA OLE TONKEI.....13<sup>TH</sup> INTERESTED PARTY

#### RULING

Pursuant to a Ruling delivered on the 2<sup>nd</sup> of December 2021, the Honourable Court directed that Parties do file submissions on Prayer No.9 in the Chamber Summons dated 29<sup>th</sup> July 2019.

The Prayer No. 9 in the Chamber Summons Application dated 29<sup>th</sup> July 2019 reads as follows:-

***“That the grant of Leave herein do operate as a Stay of the 1<sup>st</sup> Respondent’s Order and/or decision made on the 6<sup>th</sup> December 2020 and 7<sup>th</sup> July 2020 pending the hearing and determination of the Judicial Review Proceedings herein.”***

A perusal of the Court proceedings herein confirm that Leave to institute Judicial Review proceedings was duly issued and the Ex-parte Applicants filed a Substantive Notice of Motion on the 10<sup>th</sup> of November 2020.

However, the Learned Court did not pronounce itself on whether or not the said Leave would operate as a Stay hence giving raise to this ruling.

Parties have filed their written submissions with the Ex-parte Applicants filing their submissions on the 9<sup>th</sup> of December 2021 and the 1<sup>st</sup> , 2<sup>nd</sup> and 3<sup>rd</sup> Respondents filing their on the 14<sup>th</sup> December 2021.

The Ex-parte Applicants are seeking to challenge two Notices namely the Declaration Notice of Establishing an Adjudication Section known as KIMINTET “E” Sub-Location in Kimintet Location of Transmara West Sub-County Corrigendum dated 6<sup>th</sup> February 2020 (referenced LA/TM/9/2/10).

The Second Notice that the Ex-parte Applicants are challenging is the Appointment of the Land Adjudication Committee- Kimintet “E” Adjudication Section dated 7<sup>th</sup> July 2020 (Referenced LA/TM/9/2/12)

On the issue of the first Notice regarding the Establishment of the Adjudication Section known as KIMINTET “E” , Ex-parte Applicants point of departure as provided in Paragraph 3 of the Supporting Affidavit dated 29<sup>th</sup> July 2020 is the Gazette Notice dated 29<sup>th</sup> October 1986.

The Gazette Notice dated 29<sup>th</sup> October 1986 and referenced as LA.9/4/13/139 was issued by Senior Land Adjudication/Settlement Officer - Narok District seeking to establish an Adjudication Section known as KIMINTET in KIMINTET Sub-Location within Siria East Location of

the former Transmara Sub-Location in Narok District.

Based on the Gazettement of 29<sup>th</sup> October 1986, the deponent namely Matampash Ole Saire was appointed into the KIMINTET Section Land Adjudication Committee by the Appointment issued on 19<sup>th</sup> March 1989 by the Land Adjudication Officer thereof.

The Ex-parte Applicants issue therefore is that the subsequent declaration done on the 6<sup>th</sup> of February 2020 under Gazette reference LA/TM/9/2/10 establishing a new Adjudication Section known as KIMINTET "E" was done without public participation and the appointment of the Land Adjudication Committee done on the 7<sup>th</sup> of July 2020 through letter dated LA/TM/9/2/12 offended the provisions of the Fair Administrative Action Act, 2015.

Without adjudicating on the merits of the substantive Notice of Motion dated 10<sup>th</sup> November 2020, the Honourable Court has also perused the contents therein as well as the Replying Affidavit of the Interested Parties sworn by Oleunua Ole Tonkei dated 25<sup>th</sup> January 2021 as well as the Replying Affidavit by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents filed on the 23<sup>rd</sup> of February 2021 to enable it evaluate and understand the entire case for purposes of arriving at a just decision on the issue of whether or not the Leave granted to file Judicial Review proceedings should also operate as a Stay.

It is indeed true as alleged by the Ex-parte Applicants that there was a Gazette Notice dated 29<sup>th</sup> October 1986 referenced as LA.9/4/13/139 declaring an Adjudication Section known as KIMINTET within KIMINTET Sub-Location Siria East Location in Transmara Sub-District of Narok District.

This fact has again been re-affirmed by the Respondents on Paragraph 5 of their Replying Affidavit dated 23<sup>rd</sup> February 2021.

However, the Respondents state in Paragraph 6 and 7 of the said Replying Affidavit that subsequent after, the said Gazette Notice dated 29<sup>th</sup> October 1986 referenced as LA.9/4/13/139 was superseded by two other Gazette Notices Reference No.LA.9/4/108 and LA.9/4/144 both dated 29<sup>th</sup> October 1986 which still declared KIMINTET Sub-Location as an Adjudication Section but created smaller Adjudication Sections namely KIMINTET "A" Adjudication Section and KIMINTET "B" Adjudication Section respectively.

According to Paragraph 4 of the Ex-parte Applicant Supporting Affidavit dated 29<sup>th</sup> July 2020 Supporting the Chamber Summons Application presently before the Honourable Court, you will note that the Appointment of the Land Adjudication Committee attached thereto was in reference to KIMINTET "B" Adjudication Section in line with the gazette Notice reference LA.9/4/144 issued on the 29<sup>th</sup> October 1986.

The Deponent's name appears on the Appointment of the Land Adjudication Committee overseeing KIMINTET "B" Adjudication Section dated 13<sup>th</sup> March 1989 and referenced LA/9/2/45 as Number 2 and indicates his position as the Vice Chairman.

Keeping in mind the above scenario, the next question for this Honourable Court is whether or not the Ex-parte Applicants are entitled to an Order of Stay as regards the Gazette Notice referenced as LA/TM/9/2/10 dated 6<sup>th</sup> February 2020 establishing KIMINTET "E" Adjudication Section within KIMINTET Location of Transmara West Sub-County.

It is clear in the mind of this Honourable Court that the Ex-parte Applicants position that the operating Gazette Notice is the one referenced LA.9/4/13/139 dated 29<sup>th</sup> October 1986 and marked as Annexure MOS 1 is not the correct position.

The Ex-parte Applicants Annexure MOS-2 dated 13<sup>th</sup> March 1989 clearly indicates that the Appointed Land Adjudication Committee relates to the area known as KIMINTET "B" Adjudication Section.

In essence, the Decision to Adjudicate the area known as KIMINTET area through various Adjudication Sections meaning KIMINTET "A", "B", "C", "D" and now "E" and "F" was done was back in the year 1986 and has been duly implemented by the Respondents in their duty for the good of the public in acquiring rights over land which is a precious commodity in our nation.

In the renown case of R(H)-Vs- Ashworth Special Hospital Authority(2003) 1 WLR 127, Dyson L.J held as follows:-

***“ The essence of a stay of proceedings is to suspend them. What this means in practice will depend on the context and the stage that has been reached in the proceedings.”***

In this present Case, the Honourable Court is of the view that the Ex-parte Applicants have not demonstrated sufficient cause to as why the decision contained in the Gazette Notice referenced as LA/TM/9/2/10 should be stayed and/or suspended.

The Honourable Court therefore declines to issue a Stay on the Gazette Notice referenced as LA/TM/9/2/10 dated 6<sup>th</sup> February 2020.

On the Appointment of the Land Adjudication Committee -KIMINTET "E" Adjudication Section, the Honourable Court is of the view that the Ex-parte Applicants Appointment contained in Annexure MOS-2 referenced LA/9/2/45 and dated 13<sup>th</sup> March 1989 refers to the Land Adjudication Committee of KIMINTET "B" Adjudication Section ONLY.

The Ex-parte Applicants membership and/or authority was specific on the Adjudication Section and was not general for the entire KIMINTET Adjudication Area.

The Ex-parte Applicants would have only convinced this Honourable Court to grant them a Stay if they had produced evidence to the effect that the same Land Adjudication Committee appointed under the letter dated 13<sup>th</sup> March 1989 and referenced as LA/9/2/45 is the same one that undertook the same roles in KIMINTET “A”, “B” “C” and “D” Adjudication Sections which are now complete.

So far, no such evidence has been produced and therefore this Honourable Court does not find any reasons to suspend the decision and/or functions of the Land Adjudication Committee appointed on the 7<sup>th</sup> July 2020 under the letter referenced as LA/TM/9/2/12 to deal with KIMINTET “E” Adjudication Section established on the 6<sup>th</sup> of February 2020 in the Gazette referenced as LA/TM/9/2/10.

In conclusion therefore, this Honourable Court do hereby decline to issue a Stay Order as pleaded in Prayer No. 9 of the Chamber Summons Application dated 29<sup>th</sup> July 2020.

**DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 20TH DAY OF DECEMBER 2021.**

**EMMANUEL.M.WASHE**

**JUDGE**