



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

JUDICIAL REVIEW APPLICATION NO. 17 OF 2018

IN THE MATTER OF AN APPLICATION BY FRANKLINE MUTWIRI

(suing as the legal representative of the estate of MURUGU M'MURAA

M'RINCHUNI alias M'MURAA RINCHUNI (DECEASED)

FOR LEAVE TO APPLY FOR JUDICIAL REVIEW BY WAY OF

CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF THE DECISION BY THE DISTRICT LAND ADJUDICATION

AND SETTLEMENT OFFICER MERU CENTRAL DISTRICT IN OBJECTION

NO'S 2197 & 3155 IN RESPECT OF P/NO 230 RUIRI/RWARERA

ADJUDICATION SECTION

BETWEEN

FRANKLINE MUTWIRI (Suing as the legal representative of the estate of

MURURI M'MURAA M'RINCHUNI alias

M'MURAA RINCHUNI (DECEASED).....EXPARTE APPLICANT

VERSUS

LAND ADJUDICATION OFFICER

RUIRI/RWARERA ADJUDICATION SECTION.....1ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT

AND

STEPHEN MAKATHIMO M'MUGAMBI.....1ST INTERESTED PARTY

MBAYA M'MURAA.....2ND INTERESTED PARTY

JUDGMENT

1. Before the court is a notice of motion dated **18.11.2018** seeking orders of certiorari to call for and bring into this court for quashing the

decision made by the 1st respondent in Meru Central District objection proceedings **numbers 2197 and 3155** over **Parcel No. Ruirir/Rwarera Adjudication Section** and an order for prohibition to prevent the 1st respondent from implementing the aforesaid decision.

2. The application is based on the grounds on its face, the statutory statement of facts dated 29.10.2018 and an affidavit of the exparte applicant verifying the facts sworn on 29.10.2018.

3. The ex-parte applicant's case is that as a legal representative of the **Estate of M'Muraa M'Rinchuni alias M'Muraa Richuni** through a grant dated **26.7.2010**, he sought and obtained a consent to sue dated **15.8.2018** regarding **objection No's 2197 and 3155**.

4. He avers the 1st respondent heard the objection proceedings on **26.9.2017**, delivered his decision on **18.7.2018** with the 1st and 2nd interested parties representing the objector while one **Edwin Koome Murugu**, represented the exparte applicant yet he had no letters of administration to represent the estate of the deceased.

5. Similarly despite lack of letters of administration the 1st respondent hived 2 acres from the exparte applicant's land and awarded it to the interested parties without involving the land adjudication committee members for the adjudication section in both the proceedings and in decision making which was contrary to the law.

6. As a consequence the exparte applicant takes the view the decision, once implemented the estate of the deceased exparte applicant shall stand prejudiced.

7. Though there is no return of service, the record shows the 1st and 2nd respondents filed grounds of opposition dated 4.5.2021. The grounds are:-

a) The applicant does not demonstrate the nature of misconduct in the actions of the 1st respondent in the exercise of his statutory duties.

b) That the applicant have not exhausted all the available mechanism and remedies provided under the Land Adjudication Act Cap 284 Laws of Kenya.

c) The court lacks jurisdiction to hear and determine this matter

d) The application is misconceived, a non-starter and an abuse of the court process.

8. Regarding hearing of the matter, the exparte applicant gave an indication to the court that this case was related to **Judicial Review No. 21 of 2018** and sought for consolidation. Despite intention to do so the exparte applicant took no action at all.

9. Similarly there was an order to file written submissions by 6.10.2021. The exparte applicant did not comply at all.

10. By written submissions dated 4.5.2021, the respondents submit the 1st respondent acted as per **Section 9 (3) of Land Adjudication Act**, was in order to allow one **Edwin Koome Murugu** to represent his late father as a beneficiary to the land and that the proceedings reflect the said **Edwin Koome Murugu** acknowledged the 2nd interested party's occupation on the land as a step son to his late father's second wife who was deserving a share of the suit land.

11. Further the respondents submitted the exparte applicant did not file a Ministers' appeal as required under **Section 29 of Land Adjudication Act** within 60 days or at all, if he felt aggrieved by the Land Adjudication Officer's decision.

12. It is submitted therefore that the failure to exhaust the remedies provided under **Section 29 of Land Adjudication Act** renders this proceedings invalid, an abuse of the court process and hence the court lacks jurisdiction to entertain this proceedings.

13. The respondents rely on **Owners of the Motor Vessel "Lilian S" –vs- Caltex Oil (K) Ltd [1998] KLR 1.**

14. The applicant's first attack is that the 1st respondent allowed a party without letters of administration to represent the estate of his father. The deceased passed on 27.8.2003. The limited grant of letters of administration ad litem was issued on 26.7.2010 while the consent to sue was issued to the exparte applicant on 15.8.2018. The proceedings and eventual decisions were heard and delivered on 26.9.2017. The exparte applicant has not indicated if he took the letters of grant of administration ad litem to the 1st respondent as soon as they were issued and was denied a chance to represent the deceased estate.

15. Similarly the exparte applicant has not produced any document to show that he brought the letters of grant to the attention of the 1st respondent failed to acknowledge them and or denied him an opportunity to act for the estate of the deceased.

16. Above all, the exparte applicant does not state when he came to know that the proceedings were ongoing and subsequently when he got to know the decision had been delivered.

17. Further the exparte applicant has not demonstrated what prejudice if any was occasioned to the estate of the deceased and especially to himself by the said Edwin Koome Murugu purportedly representing the estate.

18. Again it has been submitted by the respondents that the 2nd interested party was and is a step-brother to the exparte applicant and who was also entitled to a share of the deceased's land. The exparte applicant did not contest those facts at all especially in the notice of motion. He withheld that vital information from the court and hence failed to make full disclosure of said facts which were within his knowledge.

19. In ***Watuku Mutsiemi & Another -vs- Republic & 3 Others [2018] eKLR***, the Court of Appeal held an objection as to jurisdiction of the Minister to entertain an appeal should be raised at the earliest opportunity and a party who fails to do so may be precluded from raising the same after the conclusion of such proceedings.

20. The exparte applicant has not given reasons why he did not raise the issue of the deceased legal representative before the land adjudication officer at the earliest opportunity possible.

21. The issue of representation of deceased parties in proceedings under the Land Adjudication Act was considered by the Court of Appeal in ***Dominic Musei Ikombo -vs- Kyule Makau [2019] eKLR***. The court held such proceedings are akin to proceedings under the **Civil Procedure Act**, with the Minister having latitude of conducting the proceedings in a manner that meets substantive ends of justice.

22. As per **Section 13** of the **Land Adjudication Act** talks of a guardian or a representative according to African law. It does not refer to legal representative. The court in ***Dominic Musei Ikombo supra*** held the strict rules of civil litigation as relates to capacity to sue or be sued do not apply to proceedings before the committee or the Minister. The court went on to state it was not necessary for a person appearing on behalf of the family or clan where the head of the family or clan had deed to possess letters of administration in respect of deceased claimant.

23. The third issue raised by the exparte applicant is that the 1st respondent failed to involve land adjudication committee members in the proceedings and the eventual decision.

24. The exparte applicant attached to the verifying affidavit a consent dated 15.8.2018 from the **District Land Adjudication & Settlement officer Imenti North/Imenti South, Meru Central & Buuri Sub-County**. This consent is under **Section 30** of the **Land Adjudication Act Cap 284**.

25. From the consent and in absence of contrary evidence this court proceeds on the basis that the applicable substantive law was the **Land Adjudication Act Cap 284**.

26. In ***Peter Kimandiu -vs- Land Adjudication Officer Tigania West & 4 Others [2016] eKLR*** the Court of Appeal had occasion to determine the similarities and differences between the **Land Consolidation Act** and **Land Adjudication Act**. The court held the committee plays a crucial but central role as per **Sections 11, 15, 16, 23 & 26** of the **Land Consolidation Act** unlike under the **Sections 6, 7, 9, 10, 11 & 26** of **Land Adjudication Act** where the land adjudication officer superintends the entire process.

27. The court went on to state that there was no mandatory requirement under the **Land Adjudication Act** for the land adjudication officer to sit with the committee during the hearing and determination of the objections. Therefore it is my finding the land adjudication officer's decision cannot be faulted on that ground.

28. Turning to the issue that the exparte applicant did not exhaust internal disposal mechanism under the **Land Adjudication Act, Section 29 (1)** requires an aggrieved party to file an appeal with the Minister within 60 days from the date the decision is made.

29. The exparte applicant has not given any reason why he did not exhaust the option of an appeal. Under the **Fair Administrative Actions Act 2015**, an aggrieved party is expected to follow internal dispute mechanism unless there are exceptional circumstances why the court ought to entertain the matter in the first instance. No exceptional circumstances have been placed before the court.

30. **Article 159 2(h)** of the **Constitution** recognizes other alternative dispute resolution mechanism.

31. In ***Geoffrey Muthinja & Another -vs- Samuel Muguna Henry & 1756 Others [2015] eKLR***, the court held that the exhaustion doctrine serves the purpose of ensuring that there is postponement of judicial consideration of matters to ensure that a party is diligent within the mechanism in place for resolution outside the court.

32. In ***Speaker of the National Assembly -vs- Njenga Karume [1992] eKLR***, the court held where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or a statute, that procedure must be strictly followed.

33. In my considered view the exparte applicant's first port of call ought to have been before the Minister. He did not submit himself to the Minister and has given no sufficient reason(s) why he did not do so on time or at all.

34. In the premises my finding is the notice of motion dated 18.11.2018 lacks merit, is an abuse of the court process and is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 1ST DAY OF DECEMBER, 2021

In presence of:

Applicant – absent

Kieti for respondents

Court Assistant - Kananu

HON. C.K. NZILI

ELC JUDGE