



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**JUDICIAL REVIEW NO. 12 OF 2019**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY  
FOR ORDERS OF CERTIORARI, MANDAMUS & PROHIBITIONS**

**AND**

**IN THE MATTER OF ALLEGED VIOLATION OF CONSTITUTIONAL RIGHTS,  
PROTECTION AND GUARANTEES UNDER ARTICLE 25(a), (b) and (c), ARTICLE 40**

**AND**

**IN THE MATTER OF LAND ACT NO. 12 OF 2012**

**AND**

**IN THE MATTER OF LAND ADJUCIATION ACT**

**SAMUEL MWANGI KAHARA.....APPLICANT**

**VERSUS**

**DLASO, UPPER ATHIRU GAITI 'C' ADJUDICATION SECTION.....2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**ELIJAH MUTUMA JOHANNA.....INTERESTED PARTY**

**JUDGMENT**

1. By a notice of motion dated 13.2.2020, the applicant seeks for orders of certiorari to call for and quash the decision made on 1.5.2019 by the 2<sup>nd</sup> respondent and an order of prohibition against the aforesaid 2<sup>nd</sup> respondent from subdividing **Parcel No. 365 Igembe Adjudication Area, Upper Athiru Gaiti 'C' Adjudication Section** and issuing any part thereof to the interested party.
2. The motion is supported by an affidavit verifying the facts sworn on 26.6.2019 attaching a copy of the decision though not certified, allowing objection No. 22 over **Parcel 365**.
3. In the statement of facts dated 26.6.2019, the exparte applicant avers the interested party lodged an **A/R objection No. 22** in respect of **Parcel No. 365 Lower Athiru Gaiti 'C' adjudication Section** which objection was heard and determined through a decision made on 1.5.2019 whose outcome was to transfer the land to the interested party. The exparte applicant seeks judicial review orders, mandamus, certiorari and prohibition on the grounds the decision was ultra vires, and was made without jurisdiction.
4. With leave, the exparte applicant filed written submissions dated 28.9.2020 based on the case law of ***Republic –vs- Chairman Amagoro Land Disputes Tribunal & Another Exparte Paul Mafwabi Wanyama [2014] eKLR, Kenya National Examination Council –vs- Republic Ex-Parte Geoffrey Gathenji Njoroge & 9 Others [1997] JELR 100019 (CA) eKLR, Joseph Malakwen Lelei & Another –vs- Rift Valley Land Disputes Appeals Committee & 2 Others [2014] eKLR*** and urges the court to find the application merited.

5. On the other hand the interested party opposed the motion through a replying affidavit sworn on 14.4.2021 in which he alleges the Ex-Parte applicant had bought the land from his father before the adjudication process started but upon his death he combined the parcel he had bought with his late father's land to form Parcel No. 365. That during the adjudication the parcels initially 1890 & 1891 became 364 & 366 respectively. That although combined, on the ground there exists clear boundaries between the two parcels. The interested party claims efforts to seek the exparte applicant to transfer back the land have been futile and hence this application is a fraudulent way to take away the whole land instead of the part which was sold to him.

6. Though the respondents were given an opportunity to file replies to the notice of motion, none had been filed as at the time of writing this judgment.

7. **Section 29** of the Land Adjudication Act provides any party aggrieved by a determination of an objection under **Section 26** of the **Act**, to appeal to the Minister within 60 days. The decision given on 1.5.2019 gave the ex-parte applicant a right of appeal within 60 days.

8. The ex-parte applicant in my view had recourse under **Section 29** of the **Land Adjudication Act** to appeal over the denial or lack of fair hearing. He has not given reasons why he did not explore that remedy before coming to court.

9. In *Speaker of the National Assembly –vs- James Njenga Karume [1992] eKLR* the Court of Appeal held that where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament that procedure should be strictly followed.

10. In *Mutanga Tea & Co. Ltd. –vs- Shikara Ltd & Another [2015] eKLR*, the court held **Article 159 (2) (c)** expressly recognizes alternative forms of dispute resolution and the High Court should be at the forefront to promote such mechanism instead of stifling the mandate by usurping its powers. The same was the position taken in *Kiroket Ole Punyua –vs- Umash Ole Mwanik & 2 Others [2021] eKLR*.

11. In the premises it is my finding the court lacks jurisdiction to hear and determine the dispute. The same is struck out with costs to the respondents and the interested party.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 1<sup>ST</sup> DAY OF DECEMBER, 2021**

**In presence of:**

Miss Gikundi for Exparte applicant

Kieti for 1<sup>st</sup> and 2<sup>nd</sup> respondents

Igweta for interested party

Court Assistant - Kananu

**HON. C.K. NZILI**

**ELC JUDGE**