



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW APPLICATION NO. 10 OF 2013

IN THE MATTER OF AN APPLICATION BY M'RINGERA M'NGUTHARI FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI

AND

IN THE MATTER OF LAND PARCEL NO. 3677 ANTUAMBURI ADJUDICATION SECTION

AND

IN THE MATTER OF THE LAND CONSOLIDATION ACT CAP 283

REPUBLIC.....APPLICANT

VERSUS

M'LINGERA M'NGUTHURIINTERESTED PARTY

THE LAND ADJUDICATION OFFICER

TIGANIA DISTRICT.....RESPONDENT

M'ALAI NE YUSUF MAITIMAEX-PARTE APPLICANT

RULING

1. This is a ruling on the notice of motion dated 12/2/2019 brought under the provisions of section 3 and 3 (a) of the Civil Procedure Act seeking for orders of eviction of *“the interested party from the ex-parte applicant’s parcel of land No. 3677 Antuambui Adjudication section and that the O.C.S Mikinduri Police station be authorized to provide security during the eviction. Applicant also prays for costs of the application”*.

2. The application is premised on the grounds on the face of it and on the supporting affidavit of M'Alaine Yusuf Maitima who stated that on 28/6/2018, the court struck out the entire motion and the interested party occupied his land and stayed thereon because of the stay in the main motion. The interested party has adamantly refused to vacate the land despite the court’s order and therefore requests for an eviction order.

3. The motion was opposed via grounds of opposition by the ex-parte applicant, who contended that this court is functus officio and cannot entertain the application. The application is an abuse of the court process and is therefore fatally defective.

4. It was held in Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd Civil Appeal No. 185 of 2001 that;

“Judicial review is concerned with the decision-making process, not with the merits of the decision itself.”

5. Bearing in mind the above authority on what judicial review proceedings concern and taking into account that this application is opposed, then I find that this court cannot grant the eviction orders sought. I also note that the applicant has mixed up the parties in his application where he refers to himself as the Exparte-Applicant, yet he is the interested party.

6. I find that the application dated 12/2/2019 is not merited and the same is therefore dismissed, but each party is to bear their own costs of the application.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 26TH FEBRUARY, 2020 IN THE PRESENCE OF:-

C/A: Kananu

Muriithi holding brief for Ndubi for Exparte Applicant

Nyamu Nyaga holding brief for Kimathi K. for Interested Party

Kiongo for the Respondent

Exparte Applicant

HON. LUCY. N. MBUGUA

ELC JUDGE