



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW NO. 13 OF 2015

PETER KANYILI RUKWARO.....EX-PARTE APPLICANT

VERSUS

THE DISTRICT ADJUDICATION OFFICER,

TIGANIA EAST.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

M'MWERERIA M'ITHIRIA.....INTERESTED PARTY

JUDGMENT

BACKGROUND

The Ex-parte Applicant moved this Honourable Court vide a Chamber Summons application under certificate of urgency dated 11th June 2015 seeking leave to commence these judicial proceedings for an order of certiorari to bring into this Court for purposes of quashing the proceedings and judgment of the 1st Respondent in AR Objection No. 523 dated 28th May 2015 over land parcel No. 2025 Akaiga Adjudication Section, Tigania. The Ex-parte Applicant also sought an order that the leave so granted do operate as stay of execution/implementation of the Register of the said decision of 28th May 2015 pending the hearing and determination of the substantive motion.

The said application was placed before the duty Judge on 15th June 2015 who upon perusal, certified the same urgent to be heard on priority basis. The Court granted leave to the Ex-parte Applicant to commence Judicial Review proceedings for an order of certiorari for purposes of quashing the proceedings and judgment of the 1st Respondent dated 28th May 2015 in AR Objection No. 523 over land parcel No. 2025 Akaiga Adjudication Section Tigania. The Court also directed that the leave so granted do operate as a stay of execution/implementation of the register of the said decision pending the hearing and determination of the substantive motion.

On 7th July 2015, the Ex-parte Applicant filed the substantive motion supported by his verifying facts shown the same date. The said affidavit is further supported by numerous annexures including the proceedings of the AR Objection by the 1st Respondent. On 6th August 2015, the Interested party filed a replying affidavit opposing the said application. One Moses Muriithi Mutema who is a committee member of the Akaiga Land Adjudication Section also filed a replying affidavit. When this matter came up for directions on 23rd November 2018, the Court directed that these proceedings be canvassed by way of written submissions.

APPLICANT'S CASE

The Applicant contention is that the proceedings and decision of the Land Adjudication officer (1st Respondent) is a nullity in law in that the AR Objection No. 523 was heard without committee members as required by *Cap. 283 and 284*. The Applicant further contends that by failing to hear the AR Objection in the presence of the committee members as required in law, the entire process and the award is a nullity which has no legal effect.

INTERESTED PARTY'S CASE

The Interested party opposed the application stating that the same lacks factual and/or legal basis and ought to be dismissed with costs. He stated that he has filed four (4) replying affidavits showing that contrary to the averments by the Applicant, the AR Objection No. 523 was heard by a committee of not less than 16 members. The Interested party further stated that the orders being sought by the Applicant has been overtaken by events as the subject matter of the application has been altered and that the same does not exist in the official Government records.

RESPONDENTS CASE

Despite directions to file and serve their response and submissions in respect of the Notice of Motion application dated 7th July 2015, the Respondents have failed/refused and/or ignored to do so.

ANALYSIS AND DECISION

I have considered the Notice of Motion dated 7th July 2015 and the supporting documents. I have also considered the replying affidavit and the submissions by the parties. The main issue for determination in these Judicial Review proceedings is whether the impugned decision by the 1st Respondent delivered on 28th May 2015 in respect of AR Objection No. 523 Akaiga Adjudication Section was arrived at without jurisdiction. The copy of proceedings attached to the verifying affidavit of the Applicant marked **PK 2** does not show that there were any committee members in attendance during the hearing and determination of the said objection. **Section 9 (1) of the Land Consolidation Act Cap. 283** which is the applicable law read as follows:

“9 (1) The Adjudication officer within whose District or adjudication section is situated shall appoint a committee for each adjudication section from among persons resident in the adjudication section and each committee shall consist not less than twenty five members”.

The proceedings attached to the verifying affidavit in support of the Notice of Motion does not indicate the committee members present. The submissions by the Interested party and his counsel that there were committee members present during the hearing of the objection cannot be correct. The 1st Respondent is the District Land Adjudication officer, Tigania East where the subject matter of the dispute herein is situated. The 2nd Respondent is the Honourable Attorney General who is the Chief Legal Advisor of the Government. Nothing could have been easier than the two indicating in their response whether or not they complied with **Section 9 of the Land Consolidation Act Cap. 253 Laws of Kenya**. If the committee members were appointed and were in attendance as alleged, the proceedings could have reflected. I am inclined to believe that the decision by the Land Adjudication officer was given without the Aid of a committee as mandated by law.

In the final analysis, I allow the Notice of Motion dated 7th July 2015 in the following terms:

(1) An order of certiorari be and is hereby issued calling and bringing into this Honourable Court for purposes of quashing the decision of the 1st Respondent dated 28th May 2015 in AR Objection No. 523 concerning L.R. 2025 Akaiga Adjudication Section.

(2) The objection is remitted back to the Adjudication Officer Akaiga Adjudication Section to constitute a committee for purposes of hearing the objection in accordance with the law.

(3) The Respondents shall bear the costs of this application.

DATED and SIGNED at Kerugoya Court this 7th day of February, 2020.

E.C. CHERONO

ELC JUDGE, KERUGOYA

READ, DELIVERED and SIGNED in open Court at Meru this 10th day of February, 2020.

L.N. MBUGUA

ELC JUDGE, MERU

In the presence of: