



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW NO. 8 OF 2017

BETWEEN

REPUBLIC.....APPLICANT

AND

THE DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER (DLASO)

KARAMA ADJUDICATION SECTION.....1ST RESPONDENT

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

AND

JOSHUA MURURU M'MWENDA.....INTERESTED PARTY

AND

TIMOTHY MURUNGI.....EX-PARTE APPLICANT

JUDGMENT

INTRODUCTION

The Applicant vide an Ex-parte Chamber Summons under **Order 53 Rule 1 CPR as read with Section 8 & 9 of the Law Reform Act** sought leave to apply for an order of certiorari to bring before this Honourable Court for purposes of quashing the proceedings and decision of the 1st Respondent in Objection Proceedings No. 255 over land parcels No. 5136 and 11906 dated 22/11/2016. The Applicant had also sought to have the leave so granted to operate as a stay of implementation of the said decision dated 22/11/2016. When the Ex-parte application was placed before the duty Court, the duty Judge certified the said application urgent and granted leave to the Applicant to apply for an order of certiorari and such leave to operate as a stay against the decision of the 1st Respondent dated 22/11/2016. The Court also directed the Applicant to file and serve his substantive motion within 21 days.

On 21st March 2017, the Applicant filed the Notice of Motion under **Order 53 Rule 3 CPR**. The said Notice of Motion is supported by five grounds shown on the face thereof, the statutory statement of facts and verifying affidavit contained in the Ex-parte application filed earlier on. The Interested party did not file any response. However, the Respondents through J.M. Kiongo Litigation counsel only filed a Notice of Appointment but failed to file any response to the said application.

APPLICANT'S CASE

The Applicant stated that he is the owner of land parcel No. 11906 Karama Adjudication Section measuring approximately 0.97 acres. He further stated that he has been in occupation of the said parcel of land with his family and that he has developed it extensively with mature trees. He stated that while he was outside the country, the Interested party filed an Objection No. 255 over his land parcel No. 11906 with the 1st Respondent claiming a portion of the same. The said objection was fixed for hearing while he was still out of the country working for gain. The Applicant communicated to the 1st Respondent about his wish to be present at the hearing so that he could respond to the Interested party's claim but the 1st Respondent insisted on proceeding with the hearing his absence notwithstanding. The Applicant sent his brother one Julius Mungania to the 1st Respondent's offices to represent his interest during the hearing of the said objection. During the hearing of the said objection, the 1st Respondent compelled his brother to proceed with the hearing of the objection claiming that he had strict deadline to hear the objections in Karama Adjudication Section. The Applicant stated that the objection proceeded on 22/11/2016 in his absence and that the 1st Respondent even proceeded to sit and determine the said objection without the input and the assistance of the Land Adjudication

Committee members. He stated that the said objection was therefore heard in ultra contravention of the statute law, the Constitution and the principles of natural justice.

RESPONDENT'S CASE

The Respondents through J.M. Kiongo, Litigation counsel filed a Notice of Appointment but failed to respond to the application.

INTERESTED PARTY'S CASE

The Interested party did not enter appearance or file response to the application.

ISSUES FOR DETERMINATION

The issues for determination are as follows:

(1) Whether the A/R Objection No. 255 over land parcel No. 11906 was heard without the assistance of the committee members contrary to law?

(2) Whether the said objection was heard in violation of the rules of natural justice?

(3) Whether the Applicant is entitled to the orders sought?

(4) Who will bear the costs of these proceedings?

ANALYSIS AND DECISION

I have considered with anxious care the Ex-parte Chamber Summons, the statutory statements of facts, grounds upon which the relief is sought, the affidavit verifying the facts and the Notice of Motion. I have also considered the submissions by the Applicant.

(1) Whether the A/R Objection No. 255 over land parcel No. 11906 was heard without the assistance of the committee members contrary to law?

Section 9 (I) and (II) of the Land Consolidation, Cap 283 Laws of Kenya requires that the Adjudication officer is required to appoint a committee not less than twenty five members from amongst persons resident within whose district an adjudication section is declared to assist in the adjudication process.

From my perusal of the Objection Proceedings No. 255 over land parcels No. 5136 and 11906 which is the subject of these proceedings, I note that the Adjudication officer did not appoint specific persons to form a committee. Since this Court can only be guided by those proceedings, the Court can only assume and rightly so that the Adjudication officer did not involve the committee in his decision. Faced with a similar dispute, the Court of Appeal in the case of **PETER KIMANDIU VS LAND ADJUDICATION OFFICER TIGANIA WEST DISTRICT & 4 OTHERS (2016) e K.L.R** held as follows:

“Having found, as we have, that the dispute in this matter was governed by the LCA and that the LAO was required to determine the dispute submitted to him in conjunction with the committee, and there being no dispute that the LAO in this matter made the decision on his own, it follows that the decision making process was contrary to law and thus amenable to the corrective power of the High Court.....”

(2) Whether the said objection was heard in violation of the rules of natural justice?

From the statutory statement of facts in support of those proceedings, the Ex-parte Applicant stated that while he was at work outside the country, the interested party filed an objection with the 1st Respondent claiming a portion of his land parcel No. 11906. He further stated that the said objection was fixed for hearing while he was still out of the country working. He stated that he sent his brother one Julius Mungania to the offices of the 1st Respondent to explain his inability to attend the hearing as he was out of the country. From a cursory perusal of the proceedings, there is no application by the Applicant's brother Julius Mungania for adjournment of the A/R objection to another date. If the Applicant's brother had given any indication that the Applicant wanted to be present either in person or by his advocate, he should have made to the Adjudication officer and the same would have been reflected in the proceedings attached to the Ex-parte Chamber Summons. The Applicant's brother who represented him is shown to have fully participated in giving evidence and cross-examining witnesses. There is no evidence that he was compelled to proceed in the matter. I find that the Applicant was accorded a hearing in the said objection.

(3) Whether the Applicant is entitled to the orders sought?

From my evaluation of the evidence particularly the A/R objection proceedings, it is clear that only the first issue was successful in that the 1st Respondent in determining the A/R objection acted in contravention of the law by sitting alone without the assistance of the committee. In my view, that ground alone is sufficient to determine this application. In the result therefore, I find the Notice of Motion meritorious and the same is allowed as follows:

(1) An order of certiorari be and is hereby issued calling to this Honourable Court and quashing the proceedings and decision

dated 22/11/2016 made by the 1st Respondent in Objection No. 255 over land parcel No. 5136 and 11906 situated within Karama Adjudication Section in Tigania East Adjudication Area.

(2) Because the failure of the Adjudication officer cannot be attributed to any of the parties in the dispute herein, I order that the Objection No. 255 of 2016 be remitted back for hearing afresh as provided for under the law with the aid of a committee.

(3) Each party shall bear her own costs as the failure of the Adjudication officer cannot be blamed on any party.

DATED and SIGNED at Kerugoya 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: