



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

JUDICIAL REVIEW APPLICATION NO. 15 OF 2016

REPUBLIC.....APPLICANT

VERSUS

LAND ADJUDICATION AND SETTLEMENT OFFICER, TIGANIA EAST...RESPONDENT

IBRAHIM MURUNGI LITHARA.....INTERESTED PARTY

JUDGMENT

BACKGROUND

These Judicial Review proceedings commenced by way of an Ex-parte Chamber Summons application dated 27th June 2016 where the Applicant sought leave to apply for an order of certiorari to call for purposes of quashing the Respondent's decision issued on 16th June 2016. The Ex-parte Applicant also sought to have the leave so granted do operate as a stay of execution of the Respondent's decision pending hearing and determination of the substantive application for Judicial Review. The Exparte Applicant's application was filed under certificate of urgency and upon being placed before the duty Judge, it was certified urgent and leave granted to the Ex-parte to institute Judicial Review proceedings to call into this Honourable Court for purposes of quashing the Respondent's decision made on 16th June 2016. The Court also granted the order that the leave so granted do operate as stay of execution of the Respondent's decision pending hearing and determination of the substantive application for Judicial Review. On 29th July 2016, the Ex-parte Applicant filed the substantive motion supported by his affidavit sworn on 18th July 2016. On 9th October 2018, the Interested party filed a replying affidavit opposing the application.

EX-PARTE APPLICANT'S CASE

The Ex-parte Applicant contends that he is the registered owner of land parcel No. 598 ANKAMIA ADJUDICATION SECTION which was allocated to him after he gathered the same. The Ex-parte Applicant further stated that on 5th November 2015, the Interested party herein filed objection proceedings against him claiming that he had sold him one (1) acre vide Objection No. 1877. The Ex-parte Applicant admitted that whereas he sold the Interested party one acre which was excised from his land situated at Muruchia measuring approximately 3.22 acres and transferred to him the same land together with a portion of his were compulsorily acquired by Committee for purposes of constructing a primary school known as RWANJILO and that they were both promptly compensated with other parcels of land in an area known as Murichia. The Ex-parte Applicant stated that he took 26 years to raise his objection which period is inordinately too long. The Ex-parte Applicant also stated that during the hearing of the objection, the Respondent openly showed biasness towards the Interested party by casually awarding him one acre of his land while arguing that he was not going to suffer any harm. The Ex-parte Applicant also stated that during the hearing of the objection proceedings, the Land officer did not involve any committee member and that the Land Adjudication officer made the decision alone.

INTERESTED PARTY'S CASE

The Interested party stated that he filed his objection vide A/R Objection Number 1877 ANKAMIA ADJUDICATION SECTION which was heard by an Adjudication officer duly Gazetted as required by law. He stated that they tendered their evidence and called witnesses in the presence of Adjudication Committee members. He stated that the Ex-parte Applicant's brother one GILBERT MUTUANJAU who was a committee member representing ANTUA BUGU Clan was present. He also stated that the Committee members present were led by their Chairman one ONESMUS KOBIA and that the Adjudication officer with the assistance of the Committee members considered the evidence tendered before him and thereafter arrived at the impugned decision. He stated that the decision by the Adjudication officer was proper, procedural and fair.

ISSUES FOR DETERMINATION

The following are issues for determination:

- (1) Whether the impugned decision was heard without the involvement of the Adjudication Committee?**
- (2) If the answer to paragraph 1 above is in the positive, whether the decision by the Respondent is null and void?**
- (3) Who shall bear the costs?**

Regarding the first issue, it is now settled that Judicial Review proceedings only seek to challenge the procedural manner in which an administrative body or judicial tribunal arrived at a particular decision. That was decision in the case of Mixner & Another Vs Attorney General (2005) 2 K.L.R at page 189 where it was held:

“Judicial Review is concerned with the decision making process and not with the merits of the decision itself. Judicial Review deals with the legality of decisions of bodies or persons whose decisions are susceptible to Judicial Review. A decision can be upset through certiorari on a matter of law if on the face of it, it is made without jurisdiction or in consequence of an error of law, prohibition restrains abuse or excess of power”.

The Ex-parte Applicant is challenging the impugned decision on grounds that it was made without the involvement of the Adjudication Committee. From the Objection Proceedings No. 1877 and the decision dated 16/06/2016, it is clear that the Adjudication officer did not involve the Adjudication Committee in the process. **Section 26 of the Land Adjudication Act Cap. 284** read as follows:

“26 (1) Any person named in or affected by the Adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the Adjudication register is published, object to the Adjudication officer in writing saying in what respect he considers the Adjudication register to be incorrect or incomplete”.

Again, **Section 9 (1) of the Land Consolidation Act Cap. 283 Laws of Kenya** reads as follows:

“The Adjudication officer within whose District an adjudication section is situate shall appoint a committee for each adjudication section from amongst persons resident in the adjudication section and each committee shall consist of not less than twenty five members”.

My reading and interpretation of the two sections relating to the two statutes governing the establishment and determination of rights and interest in land under **African Customary Law** indicates that it is mandatory for the Land Adjudication officer to sit with the committee at all times and even after the completion of the Adjudication register. The objection proceedings attached to these Judicial Review proceedings shows that the Adjudication officer sat alone without the Committee. Therefore I find the impugned decision null and void for being made without the assistance of the Committee.

In the result, I make the following orders:

- (1) An order of certiorari be and is hereby issued quashing the proceedings and award of the Respondent made on 16th June 2016 in Objection Number 1877 ANKAMIA ADJUDICATION SECTION – TIGANIA EAST.**
- (2) The said objection is hereby remitted back to the Respondent to be determined in accordance with the law.**
- (3) Each party to bear her own cost of this case.**

DATED AND SIGNED AT KERUGOYA THIS 7TH DAY OF FEBRUARY, 2020.

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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: