



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MERU

JUDICIAL REVIEW NO. 30 OF 2016

REPUBLIC.....APPLICANT

VERSUS

LAND ADJUDICATION SETTLEMENT OFFICER, I GEMBE NORTH.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

JULIUS THARIANGA M'INYINGI.....1ST INTERESTED PARTY

FRANCIS BAARIU M'KIETU.....2ND INTERESTED PARTY

DAVID MWITHAE M'MUNORU.....3RD INTERESTED PARTY

LAWRENCE KIRIMI KIOME.....4TH INTERESTED PARTY

AND

JENIFFER MWITI KABERIA.....EX-PARTE APPLICANT

RULING

1. The Notice of Motion in this suit is brought to Court under **Order 53 Rules 3(1) (2) (3) and (4) of the Civil Procedure Rules, Sections 8 and 9 of the Law Reform Act, Cap 26, Laws of Kenya**. The application seeks:

A. THAT the Honourable Court be pleased to issue orders of certiorari to quash ruling of the Respondent dated 20th September 2016 granting the Interested Party the Ex-Parte Applicant's L.R NO. ANTUBETWE/KIONGO/4262 Adjudication Section.

B. Costs be provided for.

2. The grounds in support of the Applicant's application found in the statement of facts and verifying affidavit filed herein are that the applicant owns the Land **L.R NO. ANTUBETWE/KIONGO/4262 Adjudication Section** after inheriting it from her deceased husband. And that in the year 2010 the area adjudication register was closed and objections called for, where she filed Objections No. 234/2010, 235/2010, 236/2010 and 237/2010 which were heard and a decision made that her 0.20 acres of LR No. 4262 was intact and no one should interfere.

3. She avers that on 26/9/2016 the 1st Respondent in the company of the interested parties herein purportedly went to her land and took it away and registered the interested parties as the owners, this was after the determination of her objections, an action she contends is illegal for want of jurisdiction arguing that the only recourse they had was to file an appeal against the ruling on the objections. In addition, she alleges that the Respondent's action is an abuse of the due process of the law and an action of bias in favour of the Interested Parties. Further, she avers that the 1st Respondent decision was made without her being given an opportunity to be heard. She urged the court to allow the application.

4. The Interested parties in response to the application filed a joint affidavit sworn by Julius Tharianga M'Inyingi sworn on 6th February, 2018 and filed on 7th February, 2018. They aver that they are the registered owners of Land Parcels No. 10875, 9951, 10874 and 9950

ANTUBETWE KIONGO ADJUDICATION SECTION respectively and that they have homes on the same and allege that the Applicant without any provocation began encroaching on their pieces of land above and claimed ownership.

5. Additionally, they averred that the 1st Respondent's decision dated 20/09/2016 has not been challenged and that there was no breach of the law in arriving at the decision and that no evidence has been tendered to the effect that prior to 2016 the land had been subjected to A.R Proceedings.

Submissions

6. Both parties filed their respective submissions. The Ex-parte applicants submissions are dated 15th May, 2018 and filed on 17th May, 2018 whereas the Interested parties submissions are dated 16th July, 2018 and filed on 17th July, 2018.

7. The ex-parte applicant in their submissions reiterated the above grounds in support of the application, submitting that the 1st Respondent's decision delivered orally on 20th September, 2016 reversing the decision over her objections found in her favour in 2010 was made in breach of the rules of Natural Justice, alleging that the said decision which culminates in the Interested parties taking over her parcel of Land L.R NO. ANTUBETWE/KIONGO/4262 Adjudication Section is arbitrary and denied her the right to ventilate her claim and urged the court to quash the same.

8. The Interested Parties on their part submitted that the Ex-Parte Applicant filed Objections No. 234/2010, 235/2010, 236/2010 and 237/2010 where the same were heard and dismissed vide a judgment delivered on 3.3.2011 and that they are strangers to the Judgment of 29/9/2016. They submitted that the applicant and interested parties are neighbors and that from the decision of 3.3.2010 the applicant had disposed of her land and has been left with 0.20 acres. In sum they argue that they are not aware of the alluded proceeding that led to the alleged judgment of 20/9/2016 stating that the applicant is a busy body.

Issues and Analysis

9. It is now settled that the remedy of judicial review is concerned with reviewing the decision making process and not the merits of the decision.

10. I have carefully considered the pleadings and the Submissions proffered by the parties herein and in my view only two issue arise for determination. The first one is as to whether there was a decision made on 29/9/2016 by the 1st Respondent reversing the decision reached by the 1st Respondent pursuant to the Ex-parte Applicant's Objections No. 234/2010, 235/2010, 236/2010 and 237/2010 and secondly whether such decisions is arbitrary and breaches the rules of natural justice.

11. On the first issue on whether there is a decision that was made orally on 29/9/2016 that culminated in the alleged takeover of the applicant parcel of land L.R NO. ANTUBETWE/KIONGO/4262, which decision reversed the 1st Respondent earlier decision made in respect to the Ex-parte Applicant Objections No. 234/2010, 235/2010, 236/2010 and 237/2010. In this regard the Interested Parties in their submissions have denied the existence of such proceedings and such oral decision issued on 29/9/2010. However, it is notable that in their replying affidavit they admit at paragraph 10 that the said ruling exists and has not been challenged. This being an averment on oath, I am convinced that the 1st Respondent oral decision exists as a matter of fact as alleged by the applicant.

12. I now address the second issue which is as to whether the 1st Respondent's decision dated 29/9/2016 was made in breach of the law and the rules of natural justice? The applicant's case is that the said decision was reached without her being heard, a fact which has not been controverted. Further, she contends that the only available mechanism under the law for the Interested parties to challenge the decision of the 1st Respondent was to file an appeal and not revisit their earlier decision.

Conclusion

13. The upshot of the foregoing is that the 1st Respondent Decision dated 29/9/2016 herein is in breach of the law and the rules of natural justice and in blatant breach of Article 47 and 50 of the Constitution. I therefore find that the instant application is meritorious and is allowed with costs.

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.

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L.N. MBUGUA

ELC JUDGE, MERU

In the presence of: