



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**MISC. CIVIL NO. 3 OF 2016 (J.R)**

**REPUBLIC.....APPLICANT**

**VERSUS**

**LAND ADJUDICATION SETTLEMENT**

**OFFICER, TIGANIA.....RESPONDENT**

**JAPHET KARUTU MUNGATIA.....INTERESTED PARTY**

**AND**

**NAMAAN MWOITHA MURUYU..EX-PARTE APPLICANT**

**RULING**

**Background**

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

**1) THAT the Honourable Court be pleased to remove and quash the whole of the Respondent's proceedings, findings, decision and order of implementation in Objection No. 886 made on 28.10.2015 affecting Land Parcel No. 5049 Ankamia Land Adjudication Section**

**2) THAT the Honourable Court be pleased to issue an order of Prohibition to prohibit implementation of the Respondent's decision and order in Objection No. 886 made on 28.10.2015 affecting land parcel No. 5049 Ankamia Land Adjudication Section.**

**3) THAT costs of this application be provided for.**

2. The grounds in which the application is based are listed in the statement of facts. The applicant alleges that the Interested party herein lodged an objection No. 886 against him in his capacity as the legal representative of his deceased father Samwel Muruyu in regard to Land Parcel No. 5049 measuring about 1.40 acres, which land he alleges he had accorded to his father after purchasing from Daniel Mutuma and Joseph Kiaga. He denied being related to the Interested Party.

3. The applicant alleges that his deceased father had accorded the Interested Party a plot measuring 0.12 acres at Murichia, however the members of the public settled on plots including the one given to interested party to be used for public purpose and alleges that though he was the Chairman of Ankamia Land Consolidation Committee he had no role to play culminating in the Interested party losing his land. The applicant alleges that subsequent to the said developments the interested party allegedly misled his deceased father to Land Parcel No. 5049 at Chwii where he was allotted 0.85 acres instead of 0.12 acres.

4. In addition, the applicant alleges that the Respondents in the hearing of the interested party's Objection did not sit with the members of the Land Consolidation Committee and that she opened a claim which ought to have been lodged before Land Consolidation Committee thus acted in breach of Section 26 of the Land Consolidation Act, rendering the proceedings an illegality.

5. Further, the applicant alleges that he was the chairman of the Ankamia Land Consolidation Committee but was unceremoniously removed on 11.09.2015 after disagreeing with the Respondent over money issues and that the respondents swore to punish and frustrate him and alleges that the impugned decision in respect to Objection No. 886 and No. 1059 in respect to Land No. 1658 are all schemes to achieve their vendetta.

6. In sum he alleges that the Respondent's proceedings, findings, decision and order in the objection herein was wrong, illegal and biased against him and ought not be allowed to stand.

7. The Interested Party opposed the application through his Replying Affidavit sworn on 8<sup>th</sup> October, 2018 and filed on even date. He avers that the parcel of Land No. 5049 Ankamia Adjudication Section belongs to his late grandfather who had promised to give him 0.85 acres of the said land upon him giving him a goat as per Ameru custom, which he alleges he fulfilled and was given the 0.85 acres and he planted 2500 stems of tea.

8. It is his case that after the demise of his grandfather the applicant refused to transfer the said parcel of land necessitating him to file Objection No. 886 with the Land Adjudication and Settlement Officer. And that after failing to settle the dispute at home, he proceeded with his objection which was heard by more than 10 people. Additionally, he averred that the Adjudication Committee and the officer visited the disputed land and cross-examined both of them and later arrived at a just and equitable decision. And that the filing of these proceedings by the applicant is an afterthought and an abuse of the court process and urged the court to dismiss the same with costs.

### **Submissions**

9. Both parties filed their respective submissions. The applicant submissions are dated 10<sup>th</sup> December, 2018 and filed on 18<sup>th</sup> December, 2018 whereas the Interested Party submissions are dated 23<sup>rd</sup> September, 2019 and filed on even date.

10. The applicant reiterated his case as restated above in the statement of grounds submitting that the same has not been controverted, and that the dispute ought to have been adjudicated by the committee under section 11 and not for adjudication register under Section 26(1) Cap 283. They rely in the case of ***Peter Kimandiu Vs Land Adjudication Officer Tigania West District & 4 Others (2016) e K.L.R.***

11. The Interested party also reiterated the above averments and submitted that the Respondent's proceedings were proper and conducted pursuant to Section 26 of the Land Consolidation Act which culminated in a site visit and a just decision reached.

12. On the number of members of the Adjudication Committee, they submitted that there is no requirement that the members sign or record their names in the proceedings and argued that the applicant has not proved that the committee was not properly constituted. And that the applicant is only pursuing a personal vendetta against him.

13. Additionally, he submitted that during the hearing of the objection, the applicant's witnesses testified and were cross-examined and in fact gave evidence in support of the Interested party's case and submitted that the decision reached was equitable.

### **Analysis and Determination**

14. I have carefully considered the pleadings and the Submissions proffered by the parties. I have also carefully considered the one authority cited by the Ex-parte Applicant and in my view only one issue arises, that is to wit; whether the proceedings and the impugned decision made on 28<sup>th</sup> October 2010 was made without Jurisdiction and ought to be quashed?

15. 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. The Applicant is alleging that the Adjudication officer heard the Objection without the involvement of the committee. The Interested party on the other hand alleges that the hearing was conducted by more than ten people.

16. Additionally, **Section 11 of the land Consolidation Act** Provides: -

***“11 (1). The Committee appointed for an Adjudication Section shall adjudicate upon and determine in accordance with African Customary Law the claim of any individual person to any right or interest in any land within the adjudication section.***

***(2) If a Committee is unable to reach a decision in accordance with African customary law, it shall refer the matter to the Arbitration Board which shall decide the matter and shall inform the Committee of its decision”.***

17. Further, **Section 26 of the Land Consolidation Act** provides:

***26(1) Any person named in or affected by the Adjudication Register who considers such Register to be inaccurate or incomplete in any respect, or who is aggrieved by the allocation of land as entered in the Adjudication Register, may within sixty days of the date upon which the notice mentioned in Section 25 of this Act is published at the office of the Regional Government Agent within whose district the adjudication area to which such Register relates is situated (and such date shall be endorsed upon the said notice), Inform the Adjudication Officer, stating the grounds of his objection, and the Adjudication Officer shall consider the matter with the Committee and may dismiss the objection, or, if he thinks the objection to be valid, order the Committee to take such action as may be necessary to rectify the matter and for this purpose the Committee may exercise all or any of the powers conferred by Section 21 of this Act”.***

18. It is therefore clear from the foregoing that the Adjudication officer is required to appoint a committee of at least 25 members and shall Consider the matter filed before it with the Committee and the the Adjudication Officer after considering the Objection may dismiss the objection, or if he thinks the objection to be valid, order the Committee to take such action as may be necessary to rectify the matter. This explains why the decisions and proceedings therein is issued by the Adjudication officer.

19. I have carefully looked at the proceedings before the Respondent herein, and it is clear to me that the Ex parte applicant participated in

the proceedings, where he called witnessed and in fact participated in the site visit, where the Respondents after considering all facts before it reached its decision which was in favour of the Interested Party. In a Judicial Review Application, the Court is not concerned with the merits of the decision but the process. It is therefore clear in my mind that the applicant herein was given a fair hearing in line with the principles of natural justice and therefore he cannot be heard to complain that he was not heard.

20. Additionally, the applicant alleges that the decision reached herein was out of vendetta by the Respondent after they unceremoniously kicked him out as the Chairman of the Ankamia Land Consolidation Committee. In this regard, no evidence has been adduced either by the Interested party or his witnesses.

21. The Contentious issue herein is on the number of persons in the committee who participated in the impugned Objection proceedings herein. The applicant contends that the Adjudication Officer heard the objection without involving the committee whereas the Interested party alleges that there was more than 10 people present and that the proceeding were conducted in accordance with the law.

22. My cursory look at the minutes of the objection proceedings held on 27/1/2015 which gave rise to the impugned decision indicates that the Adjudication officer sat alone in determining the objection raised. The names of the committee members are not shown on the face of the proceedings. The more than ten (10)

members of the committee which the Interested party alleged were present are not reflected from the minutes of the proceedings. The Respondent did not even file a replying affidavit in response to these proceedings controverting the Ex-parte Applicant's assertion that he sat alone in determining the impugned decision. I am therefore of the view that the Ex-parte Applicant is correct in stating that the impugned decision reached contravene the provisions of **Cap. 283 Laws of Kenya**. In the result, I find the application merited. I therefore grant the following orders in this judgment:

***(1) An order shall hereof issue of certiorari to remove to this Court the decision of the Land Adjudication officer, Tigania East District ANKAMIA ADJUDICATION SECTION and quash the same and all other orders made therein.***

***(2) An order is hereby issued of mandamus to the Land Adjudication officer Tigania East District, ANKAMIA ADJUDICATION SECTION to hear Objections No. 886 in respect of land parcel No. 5049 and 1059 land parcel No. 1658 both of 2015 with the aid of an appointed committee as per Section 9 (1) (2) of Cap. 283 and as provided under Section 26 of Cap. 283.***

***(3) Since the Adjudication officer's failure cannot be attributed on either the Applicant or the Interested party, I order each party to bear their own costs in respect of this action.***

**DATED and SIGNED at Kerugoya this 7<sup>th</sup> day of February, 2020.**

.....  
**E.C. CHERONO**

**ELC JUDGE, KERUGOYA**

**READ, DELIVERED and SIGNED in open Court at Meru this 10<sup>th</sup> day of February, 2020.**

.....  
**L.N. MBUGUA**

**ELC JUDGE, MERU**

***In the presence of:***