



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**JUDICIAL REVIEW APPLICATION NO. 27 OF 2015**

**ATANASIO NTONJIRA ..... 1<sup>ST</sup> EX-PARTE APPLICANT**

**JASON NCHEENE ..... 2<sup>ND</sup> EXPARTE APPLICANT**

**VERSUS**

**THE DISTRICT LAND ADJUDICATION OFFICER**

**TIGANIA EAST .....1<sup>ST</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL..... 2<sup>ND</sup> RESPONDENT**

**PETER KIREMA M'RUKWARU ..... INTERESTED PARTY**

**RULING**

1. The applicants filed a notice of motion dated 15<sup>th</sup> May 2019 brought under order 3 and 3A Civil Procedure Act seeking orders that the Court authorizes the District Land Adjudication Officer, Tigania East to mark boundaries of the suit land parcels and that the O.C.S Mikinduri Police Station do supervise the exercise to enforce security.
2. The application is based on the grounds on the face of it and on the supporting affidavit of Jason Ncheene who averred that this suit was heard and decided in his favour where this court quashed the respondents decision dated 18/6/2015 in respect of AR Objection No. 1474 between the interested party and one Jackson Kagwika over all affected parcel No. 2131, 430. 4764, 4738, 4708, Akaiga Adjudication section.
3. The court directed that the dispute be remitted back to the land adjudication and settlement officer for hearing and determination. The

dispute was referred back and heard in their favour. As per the second hearing of the objection, the interested party's objection was dismissed, while the decision was in his favour to the effect that the parcels namely 2131, 430, 4738, 4708, 4644 and 5530 shall remain on the adjudication register and to retain the boundaries as earlier fenced.

4. At the time the re-hearing was done the interested parties had removed all the boundaries over the suit parcels of land and have refused to move out of the land or allow the adjudication officer to mark the boundary.

5. The application was opposed vide the replying affidavit of Peter Kirema who contended that this court delivered its judgment on 23/11/2017 and therefore it is functus officio. The orders in the judgement remitting the dispute back to the DLASO for hearing and determination have been executed and the application herein introduces a new cause of action resulting from re-submission of the dispute. An order of mandamus cannot issue post judgement whereas the applicant only sought an order of certiorari in the main suit. Additionally, the application is brought under the wrong applicable provisions and hence the order sought cannot issue.

6. I have carefully perused the application, affidavits, submissions and the record in its entirety and the issue to be determined is **whether to grant the prayers for the marking of the boundaries and provision of security.**

7. The initial orders sought by the Ex-parte applicant were orders of certiorari to quash the the decision of the land adjudication officer dated 18/6/2015 in AR objection No. 1474. This court in its judgement directed that the dispute be remitted back to the DLASO for hearing, which was done as ordered. I am in agreement with the submissions of the interested party that the orders being sought is an attempt to bring a new cause of action, to compel the DLASO to undertake a certain action. I therefore find that this court is functus-officio in so far as the prayers in the initial suit are concerned.

8. The application is dismissed with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT MERU THIS 21<sup>ST</sup> DAY OF MAY, 2020**

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**

**ORDER**

The date of delivery of this ruling was given to the parties at the conclusion of the hearing and by a fresh notice by the Deputy Registrar. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17<sup>th</sup> March, 2020 and published in the Kenya Gazette of 17<sup>th</sup> April 2020 as Gazette Notice no.3137, this ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court.

**HON. LUCY N. MBUGUA**

**ELC JUDGE**