



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW NO. 5 OF 2015

REPUBLIC.....APPLICANT

VERSUS

THE LAND ADJUDICATION AND SETTLEMENT OFFICER

TIGANIA EAST/WEST DEMARCATION OFFICE.....1ST RESPONDENT

AKAIGA ADJUDICATION SECTION.....2ND RESPONDENT

M'ITARU KABARI.....INTERESTED PARTY

EX-PARTE APPLICANT

BENJAMIN MUGAMBI MUKINDIA

JUDGMENT

1. The ex-parte applicant herein filed the substantive notice of motion on 29th April 2015 pursuant to the provisions of **Order 53 Rule 3 of the Civil Procedure Rules** seeking the following Orders;

a) **“That this Honourable court be pleased to issue Judicial Review orders of certiorari to remove into this court for the purposes of quashing the decision of the land Adjudication Officer Tigania East/West dated 12/2/2015 in objection proceedings No. 1149 of 2015 in respect of land folio No. 155 Akaiga Adjudication Section.**

b) **This honourable Court do issue an order of prohibition to prohibit the second respondent from acting on or in preventing the decisions made by the 1st Respondent on 12/2/2015 cancelling his name as owner of the suit land inserting that of the interested party.**

c) **Costs of the suit.”**

2. The application was supported by the grounds on the face of the application and the statement of facts made by the applicant where he averred that he has always been the owner of a parcel of land **Folio No. 155 Akaiga Adjudication** section measuring 16.62 Acres having been awarded the same in **case No. 744/75/76 in objection No. 1149/1976.**

3. He noticed that 5 acres had been excised and given to the interested party as **folio Nos. 845 and 4742 Akaiga adjudication section.** That the applicant complained to the 1st Respondent who summoned the parties for hearing on 10/2/2015. The interested party applied for adjournment whereby the case was deferred to 12.2.2015, when the case was decided in his favour and the land was to be transferred to him. The suit land was eventually registered in his favour. That when he later requested for the proceedings, he found that the register had been cancelled by the 2nd Respondent and the name of the interested party inserted thereon. That the actions of the respondents are contrary to the rules of natural justice in that the applicant was deprived of 5 acres of his land without being heard.

4. The applicant filed a further affidavit dated 13th July 2015 where he again stated that the matter was listed for hearing on 10/2/2015 when the interested party claimed that he had no witnesses and the matter was adjourned to 12/2/2015 when the hearing took place and the interested party was ordered to transfer the land back to him and this was entered in the folio No. 1087. In this 2nd affidavit, the ex-parte applicant availed the following documents for the court’s perusal; **BMM1 a copy of the ownership of Folio 155 Akaiga adjudication Section and a copy of a receipt. BMM2 which is a document identified as a copy of the objection dated 9/1/2013; BMM3 which is identified as a copy of the record of 12/2/2015 and BMM4 which is a photocopy of a letter dated 17.2.2015.**

5. The exparte applicant stated that after he wrote the letter of 17.2.2015, the officer who heard the case minuted the words (case to be reheard) which was clearly discernible in **BMM5** (this is actually captured in BMM4 as there is no BMM5).
6. The **interested party** opposed the suit vide his replying affidavit filed in court on 13.6.2015. He averred that he had bought **Lr. No. Akaiga Adjudication Section/4742 measuring 6 acres** in the year **1985** for a consideration from the exparte applicant. That the land was excised from the larger portion of the applicant's land and he has lived on the land peacefully for the last 30 years.
7. That he received summons to attend the hearing of a case involving the parcel of land on 10/2/2015, but the case was adjourned to 12/2/2015. He again attended the hearing on 12/2/2015 with his witnesses but the applicant refused to proceed with the hearing despite the persistent pleas from the Land Adjudication officer. That there was no register change since the land had been in his name since the time the applicant transferred the same to him.
8. The interested party contends that this suit is unmerited as there is no copy of the decision being challenged and sought to be quashed.
9. In support of his case, the interested party availed the following documents; **MKI, a copy of the letter dated 16/3/2015 from the Land adjudication & settlement officer which showed that the land belonged to him; MK2, summons endorsed with the words "last adjournment" by the adjudication officer.**
10. This court directed the parties to canvass the main notice of motion through written submissions of which the exparte applicant and the interested party have duly complied. I have not seen the input of the respondent despite the fact they were represented in court during the trial.

Analysis and Determination

11. In respect to the scope and purpose of judicial review, the Court of Appeal in the case of **Municipal Council Of Mombasa V Republic And Another 2002 eKLR** stated as follows;

"Judicial review is concerned with the decision -making process, not with the merits of the decision itself. The Court would only be concerned with the process leading to the making of the decision. How was the decision arrived at? Did those who made the decision have the power, i.e. the jurisdiction to make it? Were the persons affected by the decision heard before it was made? In making the decision, did the decision - maker take into account relevant matters or did he take into account irrelevant matters? These are the kind of questions a Court hearing a matter by way of judicial review is concerned with, and such Court is not entitled to act as a Court of appeal over the decider; acting as an appeal Court over the decider would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision – and that, as we have said, is not the province of judicial review."

See also; **Samwel Kubai M'ithiria v District Commissioner & 2 others [2019] eKLR.**

12. Equally in the case of **Republic vs Kenya Power and Lighting Company Limited & another [2013] eKLR** the Court observed that;

"...it is not enough for an applicant in judicial review proceedings to claim that a tribunal has acted illegally, unreasonably or in breach of rules of natural justice. The actual sins of a tribunal must be exhibited for judicial review remedies to be granted."

13. **Section 26** of both the **Land Adjudication Act, cap 284** and the **Land Consolidation Act cap 283** laws of Kenya provides the legal platform in which the objection to the adjudication register (commonly referred to as **A/R Objection cases**) proceedings are anchored on. Ordinarily, the law applicable is indicated on the first page of such proceedings (I.e, whether it is **Cap 284 or Cap 283**).

14. The applicant did not attach the proceedings of the alleged objection case as well as the decision thereof. His document marked as BMM3 is apparently a copy of the record of 12.2.2015, the date the case was allegedly heard. However, that document is not dated and signed by the adjudication officer and it certainly does not reflect the occurrence of any proceedings or decision.

15. The totality of the facts shows that there are no proceedings and/or decision of the respondents that have been availed by the applicant capable of being quashed. The applicant having not exhibited the actual sins of the adjudication officer, the prayers sought in the application cannot be granted. See **Republic vs Kenya Power and Lighting Company Limited & another (supra)**.

16. I must express my dismay in the way the respondents opted to remain missing in action in this matter. The respondents are the ones at the centre of the maze. They would be in a position to clarify such issues as to whether any objection case had been lodged in the first place, who filed the case, whether such a case was heard and what the applicable legal regime was. It was not enough for the respondents to claim that they would associate themselves with the averments of the interested party (and this was only in respect of the application to have the suit reinstated).

17. The notice of motion filed on 29/4/2015 therefore lacks merits and the same is dismissed. Each party to bear their own costs of the suit.

DATED, SIGNED AND DELIVERED AT MERU THIS 14TH DAY OF JULY, 2020

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this Judgment was given by notice. 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 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this Judgment 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