



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

JUDICIAL REVIEW NO. 13 OF 2017

IN THE MATTER OF AN APPLICATION BY LYDIAH KAUNANKU NJOROGE FOR LEAVE

TO APPLY FOR ORDERS OF CERTIORARI MANDAMUS AND PROHIBITION

AND

IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF THE LAND CONSOLIDATION ACT CAP 283 LAWS OF KENYA

AND

IN THE MATTER OF LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA

AND

IN THE MATTER OF LAND PARCEL NOS. 10964 AND 10965 KARAMA ADJUDICATION SECTIONS

AND

IN THE MATTER OF THE JUDICATURE ACT CAP 8 LAWS OF KENYA

BETWEEN

LYDIA KAUNANKU NJOROGE.....EXPARTE APPLICANT

VERSUS

DLASO TIGANIA EAST SUB-COUNTY.....RESPONDENT

THURANIRA M'MUCHEKE.....1ST INTERESTED PARTY

DAVID KOBIA MUCHEKE..... 2ND INTERESTED PARTY

CHARLES MWONGERA.....3RD INTERESTED PARTY

MUKIIRA ITHAE.....4TH INTERESTED PARTY

JUDAH NJOROGE.....5TH INTERESTED PARTY

RICHARD MWILARIA.....6TH INTERESTED PARTY

JUDGMENT

1. This matter relates to the Notice of Motion dated 13/04/2017 brought pursuant to **Order 53 of the Civil Procedure Rules 2010**, where the applicant seeks the following orders:

a) *AN ORDER OF CERTIORARI to remove into this court for the purposes of being quashed the respondent's decision to take away portions of the applicant's parcel of land and allocating them to the other persons complete with new numbers.*

b) *AN ORDER OF MANDAMUS to compel the respondent to measure correctly the applicant's parcel of land and indicate the correct acreage both on paper and on the ground.*

c) *AN ORDER OF PROHIBITION to restrain the interested parties from occupying the portions illegally occupied by them.*

d) *Costs of the suit.*

2. It is the applicant's case that she is the proprietor of land parcel Nos. 10964 and 10965 Karama Adjudication Section measuring 2 acres and 2.06 acres respectively. That the respondent deducted the acreage on the ground into several portions Nos. 1605, 7214, 1043, 2172, 3293 and 7793, and allocated the same to the Interested Parties. The respondent has taken measurements of her land parcels on the ground and found that they are less by over one (1) acre. The loss of the acreage can be traced to the Interested Parties' parcels of land.

3. The ex parte applicant further states that she filed an objection challenging the excision of her land parcels, but the respondent refused to act and retained the Interested Parties parcels of land knowing that they are non-existent. She therefore contends that the respondent acted injudiciously and disregarded the applicant's right.

4. The respondent opposed the suit vide his grounds of opposition dated 1/10/2018. He stated that the suit lacks merits for the orders sought are not tenable. This is because the decision against which this judicial review is filed never allocated land to any of the parties herein. It is further averred that the ex parte applicant is attempting to reverse the adjudication process in an entire section to suit her own needs.

5. The 1st, 2nd, 3rd and 5th interested parties also opposed the suit via the replying affidavit of David Kobia Mucheke sworn on 27/09/2017. It is argued that the 1st Interested Party gathered Parcel No. 1605 in the early 1970s and has lived on the said land for over 40 years. Parcel No. 7214 was excised from parcel No. 3543 which belonged to the 2nd Interested Party's grandfather. This parcel was demarcated to him (the 2nd interested party) in year 2005. Parcel No. 7793 was gathered by John Mwongela's father and was registered in the 1970s. Parcel No. 2172 is registered in the name of Geoffrey Mwikah, father to the 5th Interested Party. The latter was born, raised and lives on the said land parcel.

6. The interested parties contend that it is untrue that Parcel Nos. 1605, 7214, 1043, 2172, 3293 and 7793 are non-existent. On the contrary, the land adjudication officer found that the area occupied by the said parcels of land on the ground is less as opposed to what is indicated in the lands office document. The findings of the officer were clear that there was no extra or excess land that could be excised from their land parcels to compensate the applicant for lost acreage. Moreover, the Karama Adjudication section is being adjudicated under **the Land Consolidation Act CAP 283 Laws of Kenya**. The process results in consolidation of various parcels as well as reduction of some to cater for public utilities. The boundaries to their lands as they currently stand were pointed out to them by the demarcation officers which took account of 6 points that was agreed would be shaved off every 1 acre to cater for public utilities.

7. It was submitted for the ex parte applicant that that she raised her Objection Nos. 749, 750, 751, 752, 753 and 5606 which proceeded to be heard under the **Land Consolidation Act CAP 283** where the decision of the Adjudication Officer is final and is not subject to an appeal as per **Section 26 (3) of the CAP 283**. The applicant was deprived of 1.16 acres as a result of the actions of the respondent who did not consider the laid down procedure as provided for under **Section 21 and 26 CAP 283** which led to an irrational decision. The ex parte applicant avers that the respondent acted *ultra vires* thus rendering the decision made on 21/11/2016 null and void ab initio. It is also averred that the respondent was bound to hear and determine the matter with the aid of a committee.

8. She relied on the case of **Republic v Land Adjudication and Settlement Officer Tigania East (Kathio M'Igweta-Interested party) (2018) eKLR**, and **Tigania East District Land Adjudication and Settlement Officer & Another; Joseph Mathita Ikirima Ex parte, Solomon Mworira Samuel [2020] eKLR** to support her submissions.

9. The Interested Parties submitted that the orders sought by the applicant will take away their lands which they have occupied for many years. The decision that was rendered by the 1st respondent on 21/11/2016 did not hand any portion of land to any of the Interested Parties. It merely acknowledged the discrepancies between what is recorded in the lands office and what is actually on the ground. It does not state that the Interested Parties took any portion of the applicant's land. Moreover, the applicant has failed to challenge this decision within a period of six months as required as she seeks to reverse decisions that were taken well over fifteen (15) years ago.

10. The issue for determination is ***whether the orders sought in the substantive Judicial Review Motion are merited.***

11. **Article 47 of the Constitution** provides as follows:

“(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action”.

12. Consequently, courts have the authority to supervise the actions and or decisions of administrative bodies or tribunals. The court should be concerned with the process leading to the making of the decision and not the merits of the decision, see- **Municipal Council of Mombasa v Republic & another [2002] eKLR.**

13. The person seeking judicial review of an administrative decision must be able to persuade the court that there are grounds for review in order for the legality of the administrative decision to be judicially challenged. See **Republic v Cabinet Secretary, Ministry of Agricultures, Livestock & Fisheries; Cabinet Secretary, Ministry of Industry, Trade & Co-operatives (Interested Party) Tanners Association of Kenya(Suing through its Chairman Robert Njoka Ex Parte Applicant [2019] eKLR.**

14. The exparte applicant has raised the issue of lack of a committee in the hearing of the objection cases. However, this was not one of the grounds raised when the suit was filed. She introduced this piece of new evidence in her submissions. The purpose of submissions is for a party to summarize his or her case and provide the court with their closing arguments. No new evidence may be introduced for the other party may not have the opportunity to respond and question the same. The introduction of this new information by the applicant is not acceptable and is hereby disregarded by the court, for it is an abuse of the court process.

15. Secondly, the applicant alleges that the respondent deducted some her of her land and gave the same to the Interested Parties. I have thoroughly perused the decision of the 1st respondent delivered on 16.2.2017, see--annexture LNK2. The respondent stated as follows in his decision:

“The above P/Nos of the above defendants, its clear that they are not enough on the ground. Most of them are less and some have filed A/R objection to be shown where their remaining land is. Due to lack of excess land the objector’s cases cannot be allowed.”

16. It is apparent that the objection cases lodged by the exparte applicant herein were not allowed. The respondent noted that even the parcels of the interested parties were also less on the ground. The claim of the exparte applicant that the respondent illegally took away her parcels of land and gave them to the interested parties is therefore unfounded.

17. In the final analysis, I find that this suit is not merited. The same is hereby dismissed with costs to the respondent and the interested parties.

DATED, SIGNED AND DELIVERED AT MERU THIS 30TH DAY OF SEPTEMBER, 2020

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this Judgment was given on 6.7.2020. 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