



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
MISC. APPLICATION NO. 65 OF 2010

EZEKIEL M'IBIRI.....1ST APPLICANT

VERSUS

LAND ADJUDICATION OFFICER TIGANIA ADJ AREA.....1ST RESPONDENT

HON. A.G.....2ND RESPONDENT

MARTHA GIKOU NGEERA.....INTERESTED PARTY

J U D G M E N T

The exparte applicant EZEKIEL M'IBIRI by Notice of Motion dated 19th October, 2010 brought to court pursuant to provisions of Order LIII Rules 1, 2, 3 and 4 of the Civil Procedure Rules and Section 8 and 9 of the Law Reform Act and all enabling provisions of the Law sought the following orders:

1. *That this honourable court be pleased to grant the orders of certiorari to remove into this honourable court and quash the proceedings and the decision of the 1st respondent pursuant to the objection No.487 Tigania Adjudication Area Uringu II Adjudication Section for purposes of being quashed.*
2. *That this honourable court be pleased to grant orders of prohibition to prohibit the respondent, their agents or servants or the interested party from implementing the decision of the 1st respondent pursuant to objection No.487 Tigania Adjudication area Uringu II Adjudication Section.*
3. *That the costs of this matter be paid by the respondents.*

The exparte applicant's application is said to be premised on matters set out in the statutory statement of facts and verifying affidavits and on further grounds inter alia that:-

- a. *That the decision of the 1st respondent pursuant to objection No.487 is plainly, ultra vires the powers of the 1st respondent and wrongful.*
- b. *That the 1st respondent's decision is against the facts on the ground the law.*
- c. *That implementation of the said decision shall deprive the applicant the protection of the law and render him to suffer irreparably.*
- d. *That the application herein is merited in all the circumstances.*

The applicant's case briefly is that the interested party filed an objection against the applicant's parcel of

land No.Uringu II Adjudication Section Parcel No.2012 claiming the land belonged to her grandfather who is deceased. The applicant further claims that without ascertaining that the interested party had letters of administration in respect of the estate of her grandfather, the Land Adjudication Officer, entertained the dispute and proceeded with the hearing and determination of the objection.

The applicant therefore contends that the 1st respondent's decision subject of this application is against the law and he acted against the principles of natural justice and the procedure adopted was against the law.

The interested party on his part has opposed the application contending that the application and statement of facts are replete with spurious allegations and deliberate misrepresentation and distortion of facts to mislead the court. It is further contended that the 1st respondent rightly found, the land belonged to her father in-law which he had left to her late husband vide objection No.436 and which land had been transferred to her long before her husband had died and that therefore she did not require letters of administration over the estate of her husband or her father in-law.

The 1st respondent on the other hand contends that its decision was correct in law and principles of natural justice were adhered to since all parties were accorded an opportunity to adduce evidence and mandatory proceedings were followed.

I have in this application very carefully perused the pleadings; both written and oral submissions and authorities relied upon by the parties. That from the pleadings and submissions by the parties the issues for determination can be narrowed to the following:-

- a. *Whether the 1st respondent's decision is against the law and principles of natural justice?*
- b. *Whether the interested party's claim is sustainable for want of letters of administration?*
- c. *Whether the 1st respondent making a decision brought into the dispute other peoples' parcel of land and which he awarded to the interested party and whether the 1st respondent acted ultra vires his powers under the Land Adjudication Act?*

On the first issue the interested party in her Replying Affidavit under Paragraphs 14 and 15 depones that the 1st respondent gave each side an opportunity to state its case and call all witnesses and as such he did nothing wrong either in procedure or substantive law. The proceedings before the 1st respondent confirms what is deponed upon by the interested party. The contents of the interested party's affidavit have not been challenged or controverted by a further affidavit. I find that the exparte applicant was afforded an opportunity to be heard and indeed he was heard together with his witness. The applicant was not condemned unheard and the decision by the respondent is not against the law and principles of natural justice. Further the applicant has not specifically stated what principles of natural justice if any were offended.

It is trite law in an action for Judicial Review to be sustained, an applicant must demonstrate that the decision complained of is tainted with illegality, irrationality and procedural unpropriety. I do not find this to be the case in this application.

In the case of **REPUBLIC – VS- CHAIRMAN TRIBUNAL KIRINYAGA DISTRICT AND ANOTHER EX-PARTE PETER MARU(2005) eklr** Hon. Khamoni, J, as he then was, stated that Judicial Review is not appeal from a decision but a review of the manner in which the decision was made.

Further on that point in the **Republic V Judicial Service Commission of Kenya Exparte Pareno(2004) 1KLR 203 Hon. Nyamu, J**, as he then was, held that the remedy of Judicial Review is concerned with reviewing not the merits of the decision in respect of which the application for Judicial Review is made but the decision-making process itself.

Further Judicial Review is concerned not with private rights or the merits of the decision being

challenged but with the decision-making process. The purpose of Judicial Review is to ensure that an individual receives fair treatment and not to ensure that the authority after according fair treatment, reaches on a matter which it is authorized by law to decide for itself a conclusion which is correct in the eyes of the court **(See Court of Appeal No.234 of 1995 the Commissioner of Lands V Kunste Ltd)**. A careful perusal of the instant application reveals that rather than challenging the decision making process, the applicant is challenging the merits of the decision.

On the issue as to whether the interested party required the letters of administration to clothe her with capacity to pursue her claim over the parcels of lands under the Land Adjudication or Land Consolidation process the same should be dealt under the process under which the claim was lodged. The interested party claim was lodged under the Land Adjudication Act and/or Land Consolidation Act. The disputes brought under the said Acts are governed by a special regime as they are not taken as other disputes which are filed in courts. Matters under the said Acts are handled differently from normal claims which are filed in ordinary courts and in which the parties have titles to the lands. The preamble under the land Adjudication Act is clear that the Act is for providing for the ascertainment and recording of rights in trust land; the same purpose also applies in the Land Consolidation Act.

Section 13 of the Land Adjudication Act provides that every person who considers that he has an interest in land which an adjudication section is entitled to make a claim to the recording Officer. The claim under the land held under Trust land is in most cases a customary claim and as such a claimant need not have grant of letters of administration to lodge a claim as the land is a Trust land and any party with claim or interest is at liberty to lodge a claim within the requirements of formal documents or grant of letters of administration.

Furthermore in this instant application, the land subject of this application had been transferred to the interested party by her late husband who had received the same from his late father. The ownership confirmation letter "MGI" confirmed so. This fact has not been controverted. The interested party was acting in her own capacity as an owner of LR.Plot No.688 and not on behalf of anyone's estate. I find the letters of administration of estate of the interested party's father or grandfather or her husband was not necessary for sustaining of the interested party's claim.

On the issue number three the interested party deponed that 12.44 acres were illegally excised from her parcel of Land. P.No.688 by land committee and transferred to the ex-parte applicant's land parcel No.412. That the exparte applicant is in hapless bid to conceal those 12.44 acres of land by sub-dividing land P.No.412 in the adjudication record but not on the ground and registered the same to himself and his sons.

The interested party's affidavit on those matters remains unchallenged. I find that the lands that the respondents dealt with had been so transferred to defeat the ends of justice and did not belong to people who were not claiming from different titles but from same title that was subject of the objection or through the applicant. Section 26(1) of the Land Consolidation Act,(Cap.283) and Section 26(1) of the Land Adjudication Act(Cap.284) gives Land Adjudication Officer power to correct the adjudication Registrar or records and he was within his powers to recover the portions caused by sub-division by ex-parte applicant's sons and transfer the same to the exparte applicant. I therefore find the 1st respondent did not in making his decision bring into the dispute other peoples' parcel of land and awarded the same to the interested party nor did he act ultra-vires the Land Adjudication Act. The respondent further in dealing with this matter was aware that it had been dealt with by Land Adjudication Committee whose decision is not final. The objection proceedings are clear that the land committee members participated in the hearing before the Land Adjudication Officer. The interested party's objection No.487 was properly heard under Section 26(1) of the Land Adjudication Act and the same was considered by 1st respondent with the aid of the committee. The objection was properly before 1st respondent and was handled in accordance with the provisions of the law. The decision was therefore lawful.

Having come to the conclusion, I have in respect of this application I find that the application has no basis and the same is dismissed with costs to the respondents and interested party.

Dated , signed and delivered at Meru this 12th March ,2014

J. A. MAKAU

JUDGE

DELIVERED IN PRESENCE OF:

1. J. Anampiu for the applicant- absent
2. Mr. Menge h/b for Kieti for the respondent
3. Mr. C. Mbaabu for the interested party.

J. A. MAKAU

JUDGE