



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

ELC/JUDICIAL REVIEW APPLICATION NO. 23 OF 2014

**IN THE MATTER OF AN APPLICATION BY BERNARD GICHOBI NJIRA FOR JUDICIAL
REVIEW**

ORDERS OF CERTIORARI, PROHIBITION & MANDAMUS

AND

**IN THE MATTER OF RICE HOLDING NO. 220 UNDER NATIONAL IRRIGATION BOARD
(MWEA IRRIGATION SETTLEMENT SCHEME)**

AND

**IN THE MATTER OF AN ALLEGED VERDICT OF SUB-ADVISORY COMMITTEE DATED
17/4/2014 OF MWEA**

**IRRIGATION SETTLEMENT SCHEME – DEPARTING WITHOUT ANY BASIS FROM THE
EARLIER**

FULL ADVISORY MEETING VERDICT DATED 1ST APRIL, 2014

BETWEEN

BERNARD GICHOBI NJIRA.....APPLICANT

AND

NATIONAL IRRIGATION BOARD (THROUGH

MWEA IRRIGATION SETTLEMENT SCHEME).....1ST RESPONDENT

THE HON. THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

By his Chamber Summons dated 8th October, 2014, the ex-parte applicant seeks the following orders:-

a. An order of prohibition directed at the 1st respondent prohibiting it against implementing the

verdict of the 1st respondent's alleged Sub-Advisory Committee dated 17th April, 2014 in respect of Rice Holding No. 220

b. An order of certiorari to remove to this Court the verdict of the 1st respondent's Sub-Advisory Committee dated 7th April, 2014 in respect of Rice Holding No. 220

c. An order of mandamus directed at the respondents compelling them to implement the 1st respondent's Full Advisory Committee Verdict dated 1st April, 2014 in respect to Rice Holding No. 220 because the verdict was a direct result of the previous ruling of Wang'uru Magistrate's Court dated 1st November, 2012 in Misc Succession Cause No. 43 of 1972.

The applicant further seeks that the grant of leave do operate as a stay of execution and/or implementation of the said verdict of the Sub-Advisory Committee dated 17th April, 2014 pending the hearing and determination of the substantive Judicial Review Application to be filed herein.

The application was argued by Mr. Kariuki and is supported by the ex-parte applicant's verifying affidavit and statement of facts.

I have considered the application together with the supporting documents.

From the material available to me, it is the ex-parte applicant's case that a dispute involving Rice Holding No. 220 had been referred by the Wang'uru Court to the 1st respondent's Advisory Committee which after hearing the parties involved, gave its verdict that the ex-parte applicant be given 3.5 Acres of the rice holding and one KANINA NJIRA be given 1.5 Acres. The ex-parte applicant, acting on that verdict, applied for his tenant licence for the said 3.5 Acres by paying the requisite application fees of Ksh. 1,000/=. However, although he kept going to the offices of the 1st respondent for the said licence, he was told by the Scheme Manager one HOSEA K. WENDOT that unless he gave out something, he would lose part of the 3.5 Acres. On 30th May, 2014, he received a letter from the 1st respondent that he would now only have 2 Acres of the said rice holding while Kanina Njira would have 2 Acres and one Abel 1 Acre.

The ex-parte applicant then moved to the Wang'uru Court vide P.M.C.C. No. 87 of 2014 but the Court said it had no jurisdiction thus giving rise to this application.

The gist of the ex-parte applicant's complaint is that the 1st respondent's Advisory Committee having initially heard the dispute involving Rice Holding No. 220 and having awarded him 3.5 Acres of the same, did proceed thereafter to change that verdict and award him 2 Acres without hearing him and after he had cultivated the 3.5 Acres and planted rice for the June-December 2014 season. He is therefore alleging breach of the rules of Natural Justice although he has not explicitly said so. Having considered the application and all the supporting documents, I am satisfied that prima facie, the ex-parte applicant has established sufficient grounds for the leave sought in his application. I accordingly allow the application and grant the leave sought to apply for orders of certiorari, prohibition and mandamus as prayed.

In accordance with ***Order 53 Rules 3 (1) and (2) of the Civil Procedure Rules***, I direct that the applicant shall file the Notice of Motion within 21 days from the date hereof and serve the same upon the respondents, KANINA NJIRA KATHENDU and ABEL NJIRA as interested parties and ALL such other persons as are affected by it within 14 days of filing.

I further order that the leave herein granted shall operate as a stay of execution and/or implementation of the verdict of the 1st respondent's Advisory Committee dated 17th April 2014 pending the hearing and determination of the substantive Judicial Review Application.

Costs shall be in the said application.

B.N. OLAO

JUDGE

10TH OCTOBER, 2014

10/10/2014

Before

B.N. Olao – Judge

Mwangi – CC

Mr. Chomba for Wambugu for Applicant – present

Respondent – absent

COURT: Ruling delivered in open Court this 10th day of October, 2014

Mr. Chomba for Mr. Wambugu for Applicant present.

B.N. OLAO

JUDGE

10TH OCTOBER, 2014