



REPUBLIC OF KENYA

High Court at Embu

Judicial Review 40 of 2011

IN THE MATTER OF AN APPLICATION FOR ORDER OKF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF THE LAND ADJUDICATION ACT CAP. 284

AND

IN THE MATTER OF LAND APPEAL CASE NO.117 OF 2000 TO THE MINISTER FOR LANDS

***AND IN THE MATTER OF LAND PARCELS NO. MBEERE/ MBITA/2027,2028,2029,2030,2031
AND 2032 IN THE MBITA ADJUDICATION SECTION***

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

MINISTER FOR LANDS.....RESPONDENT

AND

EUTON NJUKI MUKUNGO.....INTERESTED PARTY

EXPARTE

JUSTIN NYAGI NGURE.....1ST APPLICANT

ELIUD NYAGA NGARI.....2ND APPLICANT

JOHN MURIUKI.....3RD APPLICANT

NJERU LAINE.....4TH APPLICANT

KIRANGI NGURE.....5TH APPLICANT

JOTHAN NTHIGA MABUTI.....6TH APPLICANT

R U L I N G

This is the Notice of Motion dated 16th July 2011. The *ex parte* applicants are seeking:-

(a) ***An order of certiorari to quash the decision of the Minister of Lands dated 30th December 2010 in Ministers Land Appeal No.117 of 2000 in respect of Land Parcels Nos. MBEERE/MBITA/2027 – 2032 in Mbita Adjudication Section.***

(b) ***An Order of prohibition to issue prohibiting the Minister for Lands and specifically the Director of Land Adjudication and Settlement from implementing the decision of the Minister in the said Appeal.***

The Application is based on the following grounds:-

1. ***The District Commissioner was biased.***
2. ***The Applicants were never given a hearing.***
3. ***The interested party had no locus standi to file the appeal.***
4. ***The Applicants had no locus standi to be sued.***

Leave to file Judicial Review was granted on 30/6/2011. The applicants relied on the statement of facts. They annexed a copy of the proceedings and award (JNN1) & (JNN2). The Respondent filed grounds of opposition saying the applicants had not showed any evidence of bias.

The interested party in his replying affidavit opposed the application saying the applicants had been given an opportunity to be heard but they refused to utilize it. And that the 6th applicant appeared on behalf of the rest.

All the counsels filed their rival submissions, which I have read. The matter before me is not an appeal but a Judicial Review. The main purpose of a Judicial Review is to check a process and not make a decision on the merit of the facts. And that is what I beg to deal with in this Ruling.

The 6 applicants herein wish to have the decision of the Minister's appointee quashed on the grounds of

- (a) ***Bias by the District Commissioner as Chairman of the panel.***
- (b) ***That they were denied a hearing.***
- (c) ***Lack of locus standi by the interested party and the applicants herein the appeal.***

The Appeal No. 117/2000 was heard by the District Commissioner Mbeere North District on behalf of the Minister for Lands. Did the DC have jurisdiction to hear the appeal? Under Section 29(4) of the Land Adjudication Act, the Minister's power and functions were delegable. And under that provision the DC was appointed to hear the Appeal No. 117/2000. I therefore find that he had jurisdiction to deal with the Appeal and cannot be said to have acted *ultra vires*.

Was the DC biased in his conduct of the Appeal? The Applicants say the DC was biased and misconducted himself in the manner in which he handled the Appeal. There is a letter the DC wrote dated 10/12/2010 in which he ordered the *ex parte* applicants to stop developing the parcels. They allege that the DC had prior knowledge and had already made conclusions before the Appeal was heard. A copy of this letter was annexed to the proceedings. The contents of the letter were directed to 7 persons through the Chief of Mbita Location. It means the Chief had to effect the service. The DC would not have used any other means of service outside the administrative hierarchy. The DC simply asked the parties concerned to maintain the *status quo* until the dispute is heard and determined.

Besides being the Chairman of the Appeal panel the DC remained an administrator. For Sure without any supporting facts to his letter, I do find the element of bias unsupported. The applicants also say they were denied a hearing.

A copy of the proceedings shows that all the applicants were present when the matter started. However, when it came to cross examination the applicants (4 of whom were present) refused to ask the interested party any questions. Two had left in protest accusing the DC of failing to postpone the case. When the 2nd witness testified the 4 applicants present again refused to cross examine him.

The panel also made site visits but the applicants did not participate. The chairman and assessors then made their findings and verdict. Would it then be said that the applicants were denied a hearing? They were aware of the proceedings and they even turned up for the same. Two of them elected to walk out in protest. Nobody chased them away. And the 4 who remained also elected not to participate in the cross examination nor give their own evidence. They cannot therefore blame anyone for their wrong election.

An issue of *locus standi* has been raised. Its true the appellant Jeremiah Ngiri had died by the time of the hearing of the appeal. The interested party herein represented him at the appeal. Its the applicants submission that the interested party lacked *locus standi* and so did the *exparte* applicants.

Matters before the quasi bodies would not really follow the strict adherence to civil Procedure Rules. Majority of the members of such bodies are not well versed in law. And as guided by the case ***TIMOTHEO MAKENGE VS MANUNGA NGOCHI, CIVIL APPEAL NO. 25/1978*** I do find that the DC was not bound to follow the laid down procedure in hearing civil suits i.e. the DC would not insist on only legal representatives complaining or defending claims.

Section 13 of the Land Adjudication Act provided that any one claiming to be a successor of a deceased person would not be stopped from appearing or defending. Once such a person presented himself/herself he/she would be heard. Further more Section 29(1) of the Land Adjudication Act allowed any aggrieved person to file an appeal to the Minister. Therefore the interested party and the *exparte* applicants were rightly before the Appeals Committee.

On the issue of the verifying affidavit, the correct position is that the verifying affidavit verifies the facts in the statement of Facts. It also sets out the facts relied on by the applicant ***See Civil Appeal No 45/2000 (UR) COMMISSIONER GENERAL KRA VS SILVANO ONEMA OWAKI.***

In the present application, the facts relied on are actually set out in the statement of facts. This is contrary to the requirements of Order 53 of the Civil Procedure Rules. That notwithstanding, the application lacks merit as the applicants have failed to prove any acts of bias and acting beyond jurisdiction by the Appeals Committee.

The application is therefore dismissed with costs.

DELIVERED, DATED AND SIGNED AT EMBU THIS 7TH DAY OF NOVEMBER 2012.

H.I. ONG'UDI

JUDGE

In the presence of:-

Ms. Nyaga for Okwaro for Ex parte Applicants

Mr. Nganga for Ms. Njeru for interested parties

Applicants

