



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC JUDICIAL REVIEW NO. 21 OF 2018

REPUBLIC.....APPLICANT

VERSUS

THE DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER,

MERU CENTRAL.....1ST RESPONDENT

M' MURAA M'RINCHUNI (represented by

EDWIN KOOME MURUGU).....INTERESTED PARTY

EX PARTE APPLICANT

STEPHEN MAKATHIMO

JUDGMENT

1. On 20/5/2019, this court granted the exparte applicant leave to file his substantive motion, which was duly filed on 6/6/2019. The exparte applicant sought orders of certiorari to call and quash the decision of the 1st Respondent dated 18/7/2018 in AR Objection No. 2197 and 3155 over land parcel No. 230 Ruiiri/Rwarera Adjudication Section, Meru Central District.
2. The exparte applicant averred that he was initially displaced by Irinda Primary School. He petitioned to the Minister of Lands, then Jackson Angaine who instructed the land committee to grant him alternative land as compensation. He was granted Land Parcel No. 230 Ruiiri Rwarera Adjudication Section by the land Committee. He developed the land by building a house and planting coffee. He also became a member of Ruiiri Farmers' Cooperative Society where he used to deliver coffee as a member No. 1061 from 6/4/1974.
3. That in the year 1986, he filed a case with the committee against the Respondent, but the Minister of lands adjourned the case. He would then fall ill. Upon recuperating he found that the interested party had damaged his property, and had also taken away the suit land through dubious ways. That is when the exparte applicant lodged the AR Objection No. 2197 and 3155.
4. It was his averment that the objection was heard in contravention of the land Adjudication Act and Land Consolidation Act. That the 1st respondent heard the matter single handedly and did not involve the land Committee. The land adjudication officer conducted the proceedings in English despite protests by him to get an interpreter and that the respondent refused to record his protest. He contends that the 1st respondent used double standards by awarding the 2nd objector 2 acres and dismissing his objection.
5. The respondent and interested party were duly served but they did not file any documents in response to the substantive motion.
6. In the case of **Municipal Council of Mombasa vs Republic & Umoja Consultants Limited, Nairobi Civil Appeal No. 185 of 2001, [2002] eKLR** the Court of Appeal stated that in judicial review, the court is only concerned with the process leading to the making of the decision and not the merits thereof.
7. In **Republic v Secretary of the Firearms Licensing Board & 2 others Ex -parte: Senator Johnson Muthama [2018] eKLR** the Court held as follows;

“The purpose of the remedy of judicial review is therefore to ensure that an individual is given fair treatment by the authority to which he or she has been subjected, and it is not part of that purpose to substitute the opinion of an individual judge for that of the authority constituted by law to decide the matter in question. As was held in Republic vs. Kenya Revenue Authority Ex parte Yaya Towers Limited, (2008) eKLR, the remedy of judicial review is concerned with reviewing

not the merits of the decision of which the application for judicial review is made, but the decision making process itself....”

8. A writ of Certiorari is a writ or order by which a higher court reviews a case tried in a lower court/ tribunal. In this case the applicant contends that the decision of the 1st respondent did not follow due procedure and that he was not afforded a fair hearing during the process. Whereas the application was not opposed, the applicant was still required to meet the threshold appertaining to the issuance of the orders sought. The application cannot be allowed as a matter of right simply because the same was not opposed.

9. The applicant contends that the proceedings he is challenging falls within the purview of both the land adjudication Act and the Land Consolidation Act. That however cannot be the case. The proceedings have to be anchored under one of the statutes and not both. Further, under the Land Adjudication Act, there is no requirement for the Land Adjudication officer to conduct the proceedings with a committee.

10. The exparte applicant has not attached the relevant proceedings that he seeks to impugn. It is from such proceedings that this court would have discerned whether due procedure was adhered to and whether he was afforded a fair hearing. This court is therefore left in limbo with regard to its determination. Without any proceedings and any indication of whether or not the proceedings took place, this court cannot discern and arrive at a proper determination.

11. As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of **Section 107(1) of the Evidence Act (Chapter 80 of the Laws of Kenya)**, which provides:

“ (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist”.

12. The exparte applicant bore the burden of proof regarding his claims and he failed to discharge the same; See **Isca Adhiambo Okayo v Kenya Women’s Finance Trust KSM CA Civil Appeal No. 19 of 2015 [2016]eKLR** and **Robert Ouma Njoga v Benjamin Osano Ondoro [2016] eKLR**. Without any sufficient evidence to prove the issues raised by the exparte applicant, then his claim must fail. This suit is therefore dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 18TH DAY OF NOVEMBER, 2020

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this Judgement was given to the advocates for the parties through a virtual session via Microsoft teams on 1.10.2020. In light of the declaration of measures restricting court operations due to the *COVID-19pandemic* 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