



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**Miscellaneous Case 101 of 2008**

**IN THE MATTER OF: AN APPLICATION BY M'ABUTU**

**MIRINYU FOR ORDERS OF**

**CERTIORARI AND MANDAMUS**

**AND IN THE MATTER OF**

**SECTIONS 8 AND 9 OF THE LAW**

**REFORM ACT, CAP 26, LAWS**

**OF KENYA**

**AND**

**IN THE MATTER OF: ATHINGA ATHANJA**

**ADJUDICATION SECTION AND IN**

**THE MATTER OF OBJECTION NO.**

**417 OF 2008**

**AND**

**IN THE MATTER OF: SECTION 26 OF THE LAND**

**CONSOLIDATION ACT, CAP 283,**

**LAWS OF KENYA**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**LAND ADJUDICATION OFFICER**

**IGEMBE/TIGANIA DISTRICT ..... RESPONDENT**

**JOSPHAT M'NCHEBERE M'ITHAE ..... INTERESTED PARTY**

**JUDGMENT**

Before the decision which was made by Igembe/Tigania District Adjudication Officer, there seems to have been a prior history of dispute between the *ex parte* applicant and the interested party. As a result of those prior disputes, the interested party was awarded either 6 acres or 5 acres of parcel No. 624 Athanja Athanja Adjudication Section. As a result of that award, the *ex parte* applicant filed an objection No. 417 before the Adjudication Officer. The Adjudication officer made his decision on 13<sup>th</sup> October 2008. It is that decision which is the subject of the notice of motion dated 7<sup>th</sup> February 2009 and which notice of motion is the subject of this judgment. By that notice of motion, the *ex parte* applicant seeks an order of *certiorari* to remove to this court the decision of the Land Adjudication Officer Igembe/Tigania District made in the objection case No. 417 of 2008. Further he seeks an order of mandamus to issue against the land adjudication committee to hear the objection No. 417 of 2008. I wish to deal at this preliminary stage with an issue raised by the interested party to the effect that when the *ex parte* applicant approached this court for leave to file judicial review, the same was filed against the Athanja Adjudication Committee. The extracted order of this court of 26<sup>th</sup> January 2008 is clear that leave was granted to quash the decision of the Adjudication Officer Igembe/Tigania District. Further, leave was granted for an order of mandamus against the same adjudication officer. It is clear from that extracted order that there is no basis for the opposition raised by the interested party. The same is rejected. The essence of the *ex parte* applicant application is that at the hearing of his objection No. 417 the adjudication officer failed as provided under Section 26 to hear the same with the aid of a committee. Section 26(1) of the Land Consolidation Act Cap 283 provides as follows:-

***“26. (1) Any person named in or affected by the Adjudication Register who considers such Register to be inaccurate or incomplete in any respect, or who is aggrieved by the allocation of land as entered in the Adjudication Register, may, within sixty days of the date upon which the notice mentioned in section 25 of this Act is published at the office of the Regional Government Agent within whose district the adjudication area to which such Register relates is situated (and such date shall be endorsed upon the said notice), inform the Adjudication Officer, stating the grounds of his objection, and the Adjudication Officer shall consider the matter with the Committee and may dismiss the objection, or, if he thinks the objection to be valid, order the committee to take such action as may be necessary to rectify the matter and for this purpose the Committee may exercise all or any of the powers conferred by section 21 of this Act.”***

From that section, it is clear that an adjudication officer in considering a matter brought before him has

to do so together with a committee. Looking at the proceedings in objection No. 417, it is clear that the adjudication officer did not constitute a committee as required by section 9 of the Act. Section 9(1) provides as follows:-

**“9. (1) The Adjudication Officer within whose district an adjudication section is situate shall appoint a committee for each adjudication section from amongst persons resident in the adjudication section and each Committee shall consist of not less than twenty-five members.”**

That section requires the adjudication officer to constitute a committee from amongst persons resident in the adjudication section. It is clear that that section requires the adjudication officer to make the appointment as directed therein. It does not suffice for the adjudication officer to state that the matter is referred to the clan for deliberation. That section clearly requires the adjudication officer to appoint committee members. That means that the adjudication officer needs to have named the persons constituting that committee. Such members should not be less than 25 in number. Going through the proceedings the adjudication officer did not appoint specific persons to form a committee. He simply stated that the matter was being referred to the clan. He did not even name the clan. I am therefore of the view that the *ex parte* applicant is correct in stating that the decision of the adjudication officer was made without the assistance of a committee. That being so, the decision reached contravene the provisions of Cap 283. Having made that finding, I find no basis in upholding what is stated in the interest of parties replying affidavit. I find that the application is merited. I grant the following orders in this judgment:-

- 1. An order shall hereof issue of certiorari to remove to this court the decision of the land adjudication officer Igembe/Tigania District made on 13 October 2008 in objection case No. 417 of 2008 Athing'a Athanja Adjudication section and quash the same and all orders made therein.**
- 2. An order is hereby issued of mandamus to the land adjudication officer Igembe/Tigania District to hear objection No. 417 of 2008 Athing'a Athanja Adjudication section with the aid of an appointed committee as per section 9 (1) (2) of Cap 283 and as provided under section 26 of Cap 283.**
- 3. Since the adjudication officer's failure cannot be blamed on either the applicant or the interested party, each party shall bear their own costs in respect of this action.**

Dated and delivered at Meru this 1<sup>st</sup> day of October 2009.

**MARY KASANGO**

**JUDGE**