



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

JUDICIAL REVIEW NO. E004 OF 2020

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI TO QUASH THE DECISION OF THE DEPUTY COUNTY COMMISSIONER - IGEMBE CENTRAL SUB-COUNTY DATED 15TH OCTOBER 2020, AND AN ORDER OF MANDAMUS COMPELLING HIM TO REHEAR THE MINISTER'S APPEAL NO. 361/2015.

AND

IN THE MATTER OF LAND PARCEL NO. ATHIRU/NDOLELI/4019

AND

IN THE MATTER OF LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA

AND

IN THE MATTER OF SECTION 8 AND 9 OF THE LAW REFORMS ACT CAP. 26 (L.O.K)

REPUBLIC.....APPLICANT

VERSUS

DEPUTY COUNTY COMMISSIONER - IGEMBE

CENTRAL SUB-COUNTY.....1ST RESPONDENT

LAND ADJUDICATION & SETTLEMENT OFFICER IGEMBE

CENTRAL SUB-COUNTY.....2ND RESPONDENT

HON. ATTORNEY GENERAL.....3RD RESPONDENT

AND

JOYCE KARIMI.....1ST INTERESTED PARTY

PETER MURITHI MUNORU.....2ND INTERESTED PARTY

EX-PARTE BONFACE KANGENTU KABERIA

RULING

1. This application is in the following format:

EX-PARTE CHAMBER SUMMONS

(Under Order 53 Rule 1 (1&2) of the Civil Procedure Rules - 2010)_

LET ALL PARTIES concerned attend the Honorable Judge in chambers on the day of 2020, at 9.00 O'clock in the forenoon, or soon thereafter so as counsel for the Ex-parte

Applicant shall be heard on an application for orders:

1. **THAT** the application be certified as urgent and heard forthwith.
2. **THAT** the ex-parte applicant be granted leave to apply for an order of Certiorari to bring to this Honorable Court for purposes of quashing the ruling and/or award delivered on 15th October 2020 by the 1st respondent herein.
3. **THAT** the ex-parte applicant be granted leave to apply for an order of Prohibition prohibiting the 2nd respondent from executing or implementing the ruling and/or award of the 1st respondent delivered on 15th October 2020.
4. **THAT** the ex-parte applicant be granted leave to apply for an order of Mandamus compelling the 1st respondent to rehear the ministers appeal no. 361 of 2015 and allow the ex-parte applicant to participate in the said proceedings.
5. **THAT** the leave so granted do operate as a stay of execution or implementation of the ruling and/or award of the 1st respondent delivered on 15th October 2020.
6. **THAT** this Honorable Court be pleased to order the 1st respondent to avail to this court a duly signed ruling dated 15/10/2020 or make such further or other order as it may deem fit and just to grant.
7. **THAT** the costs of this application be provided for.

WHICH APPLICATION is supported by the annexed Statement of Facts and the affidavit of **BONFACE KANGENTU KABERIA** verifying the facts relied on *inter alia*:

1. **THAT** the ex-parte applicant is a purchaser in possession of L.R. No. Athiru/Ndoleli/4019 having taken possession and exclusive occupation since the year 2010.
2. **THAT** the ex-parte applicant had purchased the said land from the 2nd interested party for valuable consideration in the year 2010, and he has extensively developed the same over the last decade.
3. **THAT** the 1st interested party had lodged an objection against the 2nd interested party at the adjudication level claiming ownership of the said land, however the same was dismissed. She however filed the minister's appeal no. 361/2015 before the 1st respondent which appeal was heard and determined in the absence of the ex-parte applicant herein.
4. **THAT** since the ruling and/or award of the 1st respondent directly affect the rights and interest of the ex-parte applicant in L.R. No. Athiru/Ndoleli/4019, it was incumbent upon the 1st respondent to ensure that the ex-parte applicant fully participated in the minister's appeal proceedings.
5. **THAT** the exclusion of the ex-parte applicant from the minister's appeal case no. 361/2015 amount to being condemned unheard and is in breach of the provisions of Article 50 of the Constitution.

DATED at **MERU** this day of 2020.

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For: KAUMBI & Co.

ADVOCATES FOR THE Ex-PARTE APPLICANT

2. When the application came up for exparte hearing advocate Kaumbi, the applicant's advocate, asked the court to grant prayers 2,3,4 and 5 as there was fear that the impugned decision would be implemented before the intended proceedings were heard and determined.
3. Having perused the apposite proceedings the following orders are issued:
 - a. The application is NOT certified urgent.
 - b. Prayers 2,3,4 and 5 are granted.
 - c. Costs shall be in the cause.

Delivered in open Court at Chuka this 8th day of December, 2020 in the presence of;

CA: Ndegwa

Kaumbi for the Applicant.

P. M. NJORGE,

JUDGE.