



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. PETITION NO. 11 OF 2017

GEOFFREY MUTIE MBULE.....PETITIONER

VERSUS

CABINET SECRETARY FOR LANDS &

PHYSICAL PLANNING (Through the Deputy County

Commissioner Mbooni East Sub County in

Appeal No. 33, 34 & 35 of 2009).....1ST RESPONDENT

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

AND

ELIZABETH MUUSI NGOVI.....1ST INTERESTED PARTY

JACKSON KIMANTHI NGOVI.....2ND INTERESTED PARTY

BENSON MUTUNGA NGOVI3RD INTERESTED PARTY

JUDGMENT

1. In the Petition dated 13th July, 2017, the Petitioner has averred that he bought Plot No. 751 Mangani Adjudication Section, from Samuel Ngovi Muthoka (*deceased*); that he bought plots number 745 and 423 in the same adjudication area from Daniel Mukola Ngovi and that during the adjudication process, the Interested Parties lodged objection proceedings and that after the Appeal processes, the High court quashed the Minister's decision and ordered that the Appeals should be re-heard by the Minister.
2. The Petitioner has averred that indeed, the Minister re-heard the Appeals and upheld the decision of the former Deputy County Commissioner; that by upholding the decision of the former Deputy County Commissioner, the Minister purported to reverse the decision of the High Court and that the Minister's decision has violated the provisions of Article 40 and 64 of the Constitution.
3. The Petitioner is seeking for several orders including: a declaration that the undated Minister's decision in Appeal Nos. 33, 34 and 35 of 2009 upholding the decision of the former Deputy Commissioner was in effect overturning the decision of the High Court quashing the earlier decision; a declaration that the Petitioner is the *bona fide* owner of Plot Nos. 751, 745 and 423 Mangani Adjudication Section; an order of certiorari, prohibition and mandamus; and an award of compensation as against the Respondents for having violated the Petitioner's fundamental rights.
4. The Interested Parties filed their Grounds of Opposition in which they averred that the Petitioner has not set out with certainty the alleged rights that have been violated; that the Petitioner has not made out a case of unconstitutionality of the actions of the Cabinet Secretary and that the Minister re-heard the Appeal as directed by the High Court.
5. The Petition proceeded by way of written submissions. The Petitioner's advocate submitted that the Constitution prohibits any Tribunal or authority from acting contrary to the rules of natural justice; that it is for those reasons that he filed Judicial Review Misc. Civil Application No. 251 of 2010; that the court ordered that the Appeals be re-submitted to the Minister for hearing and that instead of re-hearing the Appeal,

the Minister upheld the decision that had been quashed by the court.

6. Counsel submitted that the Minister has always treated him unfairly and that his decision violated his constitutional right guaranteed by Article 40 and 64 of the Constitution. The Petitioner's counsel submitted that by the Minister ordering that the Petitioner refunds the money paid for the land, he failed to appreciate and consider the inflation rates and the ever rising value of land.

7. The Petitioner's counsel submitted that having purchased the suit land for value, and having been in possession and use of the suit land, the Petitioner had legitimate expectations that the land in question would be granted to him; that the 1st Respondent's decision was contrary to the Petitioner's legitimate expectations and that Article 40 of the Constitution affords the Petitioner the right to own property, which right was breached by the 1st Respondent.

8. The Interested Parties' advocate submitted that the Petitioner's claim was heard and determined by courts of competent jurisdiction; that the Minister re-heard the Appeal as directed by the High Court and that the Petitioner has not stated how the Minister breached his constitutional rights. Counsel submitted that the Petition is a non-starter, an abuse of the court process and should be dismissed with costs.

9. The Petitioner is seeking for declaratory orders and orders of Judicial Review by way of a Petition. Although the High Court directed the 1st Respondent to re-hear the Appeal that was pending before him, the Petitioner has argued that the 1st Respondent did not do so, and that the undated decision of the 1st Respondent should be quashed.

10. The Judgment of the High Court in Machakos High Court Civil Miscellaneous Application No. 36 of 2011 dated 24th June, 2013 shows that the Petitioner herein challenged the decision of the Minister (*1st Respondent*) by way of a Judicial Review Application. The Minister who heard the impugned Appeal was the then District Commissioner, Mbooni East District. In its decision, the High Court held as follows:

“20. In this case, it is obvious that the District Commissioner contravened principles of natural justice. He failed to consider grounds upon which the Applicant appealed. He failed to recuse himself from hearing the Appeal when serious allegations had been raised against him. He failed to ascertain if indeed the Applicant had notice of the hearing date. The decision made was thereof initiated by an error on the face of the record which makes the decision ultra vires.”

11. The court, after quashing the Minister's Appeal on the grounds alluded to above, ordered as follows:-

“23. Further, I do order that the Appeal shall be re-submitted to the Minister for re-hearing in accordance with the law.”

12. It will appear from the record produced by the Petitioner that Appeal Case Nos. 34, 35 and 36 of 2009 were placed before the Mr. Peter S. Ole Mutunge, Deputy County Commissioner, Mbooni East Sub-County after the decision of the High Court was made. For reasons not known to this court, the proceedings and decision by the said officer are not dated. However, the Petitioner herein was heard, and so was the 2nd Interested Party.

13. In his verdict, the 1st Respondent held as follows:

“Sitting and determining the Appeal Case No. 35 of 2009 Mangani Adjudication. Section 1 therefore, find no sufficient evidence tabled by the Appellant (Mr. Geoffrey Mbule). The purported Sale Agreement is a self-written and its not indicating whether it was a bona fide sale of land. The money was urgently required for medical support for the late Samuel Ngovi Muthoka and was to be refunded back. It is evident that the Appellant took advantage of the situation to acquire the land. I therefore dismiss the Appeal and the decision made by the Land Arbitration Board, the former Deputy Commissioner is upheld. Plot No. 751 to remain in the ownership of the Ngovi family and the money refunded back Kshs. 20,000 (Twenty thousand shillings only).”

14. The order of the court in Judicial Review Miscellaneous Application No. 36 of 2011 was that the Appeal should be re-heard. The proceedings produced by the Petitioner shows that he was heard by the 1st Respondent. Indeed, the 1st Respondent gave detailed reasons as to why the Petitioner was not entitled to the suit land.

15. Considering that unlike in the first proceedings that were quashed by the court, the Petitioner was heard, the issue of the 1st Respondent having not complied with the order of the High Court does not arise. The 1st Respondent considered the evidence of the Petitioner and the 2nd Interested Party and arrived at an independent decision. Having given reasons for his decision, it does not matter that he arrived at the same decision that the first District Commissioner arrived at.

16. I have perused the Petition and I have not come across the alleged breach of the Petitioner's constitutional rights by the 1st Respondent. Indeed, the mere fact that the 1st Respondent made a decision which was adverse to the Petitioner, or which was similar to the first decision that was quashed by the court, does not by itself imply that there was a breach of the Petitioner's constitutional right to own property.

17. The court having ordered for the re-hearing of the Appeal, and the Appeal having been heard by a different Deputy County Commissioner, I find that the order of the court was complied with. Indeed, no evidence was placed before the court to show that the rules of natural justice were breached, or that the 1st Respondent acted *ultra vires*, to warrant the orders being sought in the Petition.

18. In the absence of a breach or violation of the Petitioner's constitutional rights, and in view of the provisions of Section 29(1) of the Land Adjudication Act which provides that the decision of the Minister is final, I find and hold that the Petition is unmeritorious.

19. For those reasons, I dismiss the Petitioner's Petition dated 13th July, 2017 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 28TH DAY OF FEBRUARY, 2019.

O.A. ANGOTE

JUDGE