



REPUBLIC OF KENYA

IN ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW NO. 3 OF 2017

REPUBLIC.....APPLICANT

VERSUS

**DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER,
TIGANIA EAST SUB COUNTY.....RESPONDENT**

AND

MOSES BARIU.....INTERESTED PARTY

JUDGMENT

Background

1. The applicant commenced these proceedings through an ex parte chamber summons application under order 53 rule 1, 2 and 4 civil procedure rules and section 8 and 9 of the law reform act cap 26 laws of Kenya. The applicant in the said ex parte chamber summons dated 20th January 2017 sought orders for inter alia leave to apply for orders of certiorari to bring to this Honourable court and quash the decision of the land adjudication officer dated 22.11.2016, relating to land parcel no. 2133 Karama adjudication section in objection no. 1140. The applicant had also sought an order that the leave so granted do operate as stay of the implementation of the impugned decision issued on 22.11.2016 pending the hearing and determination of the substantive motion to be filed. The ex parte chamber summons is supported by statement of facts and the verifying affidavit sworn the same date.
2. When the application was placed before the duty court the duty judge granted leave to file the substantive application within 21 days from 6th February 2017. The duty judge also ordered that the leave so granted do operate as a stay of the implementation of the award dated 22.11.2016 pending the filing of the substantive motion.
3. On 14.2.2017 the applicant filed the substantive notice of motion pursuant to order 53 rule 3 Civil Procedure Rules as read with section 8 and 9 of the law reform act cap 26 laws of Kenya.
4. On 1st November 2017, the interested party filed a replying affidavit opposing the application. In her replying affidavit, the interested party confirmed having filed an A/R objection no. 1140 in respect of land parcel no. 2133 Karama Adjudication Section against the applicant and that they both testified with their respective witnesses. After hearing the parties and their witnesses the adjudication officer rendered his decision in accordance with the law. When this matter came up for directions, the parties agreed by consent to have the notice of motion dated 14th February 2017 canvassed by way of affidavit evidence and written submissions.

Applicant's submission

5. The applicant at paragraph 9 of the statement of facts had challenged the impugned decision on grounds that the land adjudication officer failed to constitute a committee to assist in the hearing of the dispute. In his submissions the applicant stated that the record of the proceedings does not show the presence or participation of any member of the committee. He submitted that the adjudication in the area which is the subject of this suit is governed by the land consolidation act which demands that the hearing and determination of objection proceedings be done with the assistance of a committee who is appointed from amongst persons resident in the adjudication section.

Interested party's submissions

6. The interested party submitted that the applicant has failed to show that his right to natural justice were violated. He further submitted that the notice of motion dated 14th February 2017 lacks merit and the same should be dismissed with costs. He cited the following cases:

- *Republic vs Nairobi City Council and Hannah Waithira Gatundu and Exparte Boniface Wachira Gichimu (2016) eKLR*

- *Republic vs City Council of Nairobi Exparte Rajin Veljishah (2014) eKLR.*

Respondents Submissions

7. The respondent submitted that Judicial review orders are discretionary in nature and cannot be used to alter a judgment of a court of competent jurisdiction unless it can be shown that the court lacked jurisdiction was biased or did not observe the rules of natural justice and acted ultra vires.

8. The respondent submitted that the rules of natural justice was accorded to the parties and their witnesses. The respondent submitted that the decision by the adjudication officer was made in accordance with the law. He sought to have the application dismissed with costs.

9. I have considered with anxious care the notice of motion dated 14.2.2017, the statement of facts and the verifying affidavit. I have also considered the replying affidavits by the interested party and the respondent. I have equally considered the principles for Judicial Review and the submissions by the parties. In the case of; **Municipal council of Mombasa vs Republic & Ummoja Consultants LTD Civil Appeal No. 185 of 2001**, it was held as follows:

“Judicial Review is concerned with the decision making process, not with the merits of the decision itself. The court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the person affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters. The court should not act as a court of appeal over the decider which would involve going into the merits of the decision itself – such as whether there was or there was not sufficient evidence to support the decision”.

10. The applicant has set out seven reasons why he believes the adjudication officer erred in arriving at the impugned decision. The only ground relevant for purposes of this review is contained in paragraph 9 thereof which reads as follows:

“9 That the land adjudication officer erred in lay by failing to constitute a committee to assist in the hearing of the dispute and his decision is therefore illegal”.

11. The impugned decision arose from A/R objection no. 1140 affecting land reference No. 2133/Karama Adjudication section which the applicant became aggrieved and filed these judicial proceedings.

12. Section 26 (1) of the land consolidation act provides thus:-

“26 (1) any person named in or affected by 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 60 days of the date upon which the notice mentioned in section 25 of this act is published at the office of regional Government agent within whose district to the adjudication area to which such register relates is situated and such a date shall be endorsed upon the said notice) inform the adjudication officer , stating the grounds of his objections 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”.

13. From my reading of the above provision of the law the land adjudication officer is mandated by statute to consider the matter with the committee. The composition of that committee is spelled out under section 9 (1) of the land consolidation act cap 283 which reads as follows:

“9 (1) the adjudication officer within whose district an adjudication section is situated 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”.

14. The law requires the adjudication officer to constitute a committee who will sit to consider any person named in or affected by adjudication register who considers such register to be inaccurate or incomplete in any way or who is aggrieved by the allocation of land as entered in the adjudication register. The applicant in paragraph 9 of his statement of facts stated that the adjudication officer acted outside the law by acting alone in determining the objection without the assistance of the committee as required by law. Having carefully perused the objection proceedings and the impugned decision I find that the adjudication officer did not involve the members of the committee in determining the objection no. 115 in respect of parcel no. 2133. I therefore find that the adjudication officer acted contrary to the statutory provisions of section 26 (1) as read with section 9 (1) of the **Land Consolidation Act cap 283 Laws of Kenya**.

15. The proceedings attached to the verifying affidavit does not list any members of the committee present during the hearing of the objection. That being the case, the decision reached by the adjudication officer became ultra vires, null and void. In the upshot I find the notice of motion dated 14th February 2014 merited and the same is allowed in the following terms:

(1) An order of certiorari be and is hereby issued to remove to this Honourable court the decision of the lands adjudication officer, Tigania East adjudication area Kalama adjudication section made on 22.11.2016 relating to land parcel no. 2133/Karama adjudication section in objection no. 1140 for purposes of quashing together with all orders made thereunder.

(2) An order is hereby issued of mandamus to the land adjudication officer Tigania East adjudication area Kalama adjudication section to hear objection no. 1140 relating to land parcel no. 2133/Kalama adjudication section with the aid of an appointed committee pursuant to section 9 (1) (2) of the land consolidation act cap 283 laws of Kenya.

(3) In view of the mistake not attributed to the parties I order each party to bear his own costs.

READ, DELIVERED AND SIGNED AT MERU IN THE OPEN COURT THIS 28TH DAY OF FEBRUARY, 2019

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E.C CHERONO - JUDGE

In the presence of:

1. Ms. Rimita holding brief for Murango Mwenda for applicant
2. Mr. B. Kimathi for respondent
3. C/A - Kananu