



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**JUDICIAL REVIEW CASE NO. 15 OF 2017**

**IN THE MATTER OF AN APPLICATION BY STANLEY RUUNCHI M’IKIAO (LEGAL REP OF M’IKIAO M’THIRIABE alia M’IKIAO M’THIRIOMBE alias M’IKIAO THIROME) TO APPLY FOR JUDICIAL REVIEW FOR ORDER OF CERTIORARI**

**AND**

**IN THE MATTER OF SECTION 8 & 9 OF THE LAW REFORM ACT (CAP 26 LAWS OF KENYA)**

**AND**

**IN THE MATTER OF LAND PARCEL NO. 364 KARAMA ADJUDICATION SECTION AND IN THE MATTER OF OBJECTION NO. 5708**

**AND**

**IN THE MATTER OF SECTION 26 OF THE LAND CONSOLIDATION ACT LAWS OF KENYA**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**LAND ADJUDICATION AND**

**SETTLEMENT OFFICER ..... RESPONDENT**

**EVANJELINE KARAMBU ..... INTERESTED PARTY**

**STANLEY RUUNCHI M’IKIAO ..... PLAINTIFF**

**JUDGMENT**

**Background**

1. The applicant in these Judicial proceedings is seeking an order to quash the decision of the land adjudication and settlement officer, Tigania East District made on 8<sup>th</sup> November, 2016 in objection no. 5708 involving land parcel no. 364 KARAMA ADJUDICATION SECTION. The reasons given is that the said decision and other orders made therein were without jurisdiction and therefore ultra vires, null and void. In his affidavit verifying the facts in the chamber summons brought under order 53 rule 1 civil procedure rules dated 26.4.2017, the applicant deponed that the suit land had been gathered and in the presence and supervision of the land committee and demarcated on the ground. The applicant also deponed that the interested party was aggrieved and filed an objection no. 5708 which the respondent heard alone contrary to law and on 8<sup>th</sup> November, 2016 he ordered that his land be sub divided and the interested party given a portion. The applicant stated that the adjudication and settlement officer had no jurisdiction to hear and determine the matter alone under section 26 of the land consolidation act cap 283 laws of Kenya. He attached copies of the alleged proceedings and the impugned decision to the verifying affidavit. When the chamber summons filed under certificate was placed before the duty Judge, leave was granted to the applicant to file the substantive motion to apply for an order of certiorari to remove to this Honourable court the impugned decision of the respondent for purposes of quashing the same. The court also directed that the leave so granted do operate as a stay of further proceedings or the implementation of the said decision by the respondent herein.

2. On 9<sup>th</sup> May 2017, the applicant filed the substantive motion under order 53 rule 3 CPR and section 8 and 9 of the law Reform Act cap 26

laws of Kenya.

3. On 3<sup>rd</sup> July 2017 the interested party appointed the firm of Mithega and Kariuki advocates to act for her and on 27.7.2017 the said firm of advocates filed a notice of appointment of advocates. On 27<sup>th</sup> July 2017 the interested party filed a replying affidavit in which she opposed the applicant's application. According to her, the objection proceedings in objection no. 5708 involving land parcel no. 364 Karama Adjudication section were carried out procedurally and in accordance with the relevant law and the respondent had the requisite jurisdiction to handle the objection.

4. The respondent did not file any response to the applicant's notice of motion.

**Issues for determination**

5. The issues for determination in this case are as follows:

- (i) Whether the proceedings and the impugned decision made on 8<sup>th</sup> November 2016 was without jurisdiction
- (ii) Who shall bear the costs of this application

**Disposition**

6. I have considered the pleadings filed by the parties both in support and in opposition thereto. I have also considered the submissions by their counsels and the applicable law. These judicial proceedings are seeking to remove the proceedings and the decision by the respondent issued on 8<sup>th</sup> November 2016 to this Honourable court for purposes of quashing the same.

7. It is now settled that the remedy of judicial review is concerned with reviewing the decision making process and not the merits of the decision. The main issue for determination in this case is whether the respondent acted contrary to section 26 of the land consolidation act cap 283 laws of Kenya? The provision of that section states as follows:

*“26 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 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 this 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”.*

8. From the proceedings and the decision made by the respondent on 8<sup>th</sup> November 2016 attached to the chamber summons dated 26.4.2017 and filed in court on 27.4.2017, it is clear that the adjudication officer did not consider the objection with the committee as required under the law.

9. Section 9 (1) of the same Act requires the adjudication officer to constitute a committee from amongst persons resident in the adjudication section and each committee shall consist of members not less than twenty five

10. A cursory look at the proceedings and the decision under review shows that the decision by the adjudication officer was made without the assistance of a committee.

11. That being the case, the impugned decision is therefore ultra vires null and void and without any legal effect. In the upshot I find the notice of motion dated 9<sup>th</sup> May 2017 merited and the same is allowed in the following terms:

- (a) An order of certiorari be and is hereby issued to remove to this Hon. Court the decision of the land adjudication and settlement officer, Tigania East District made on 8<sup>th</sup> November 2016 in objection No. 5708 involving land parcel no. 364 Karama Adjudication section and quash the same and all orders made therein.
- (b) An order be and is hereby issued of mandamus to compel the land adjudication and settlement officer, Tigania East District to hear objection NO. 5708 involving land parcel no. 364 Karama Adjudication Section with the aid of an appointed committee in accordance with the law
- (c) Each party to bear their own costs

**READ, DELIVERED AND SIGNED AT MERU IN THE OPEN COURT THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2019**

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**E.C CHERONO - JUDGE**

**In the presence of:**

1. Ms. Rimita for applicant
2. Mr. Muthomi for interested party
3. Mr. B. Kimathi for respondent
4. CC: Kananu