



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT**

**AT MIGORI**

**ELC JR CASE NO. 7 OF 2017**

**(Formerly Kisii HC Misc. Application No. 22 of 2010)**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE DIRECTOR OF LAND**

**ADJUDICATION & SETTLEMENT.....1<sup>ST</sup> RESPONDENT**

**THE DISTRICT LAND ADJUDICATION &**

**SETTLEMENT OFFICER**

**FOR SUBA DISTRICT.....2<sup>ND</sup> RESPONDENT**

**AND**

**DEBORAH OGENDI.....1<sup>ST</sup> INTERESTED PARTY**

**CLEMENT AKONDO MARGOT.....2<sup>ND</sup> INTERESTED PARTY**

**ELLY KIDA ASAO.....3<sup>RD</sup> INTERESTED PARTY**

**DOMNIC ODOYO ODUMBA.....4<sup>TH</sup> INTERESTED PARTY**

**AND**

**JOSEPH GOROBA OLUM.....EX- PARTE APPLICANT**

**JUDGMENT**

1. The ex parte applicant namely **JOSEPH GOROBA OLUM** through learned counsel Mr. George S. Okoth of G.S. Okoth and Company Advocates filed an application by way of Notice of motion dated 15<sup>th</sup> March 2010 expressed under Order LIII Rule 3 (1) and 4 (1) of Civil Procedure Rules as read with Sections 8 and 9 of the Law Reform Act (cap 26) pursuant to leave of the court granted in respect of chamber summons dated 4<sup>th</sup> March 2010. The Exparte applicant seeks the following orders:-

i. The Honourable court be pleased to issue an order of MANDAMUS directed at the Director of Land Adjudication and settlement compelling him to enforce the directives given by him to the District Land Adjudication and Settlement Officer Suba District vide his letter dated 14<sup>th</sup> June 2007 reference No. DS/1/47/45/15 to the effect:-

a) That the created parcel NO. West Kobia/5082 from P/No. West Kubia/2385 be cancelled immediately as provided by Section 11(b) of the Land Adjudication Act and the court order on Civil Case No. 61 of 1990 be upheld as per Section 30 subsection (4) and (5) of the Act. Whoever is aggrieved may seek redress in a court of law.

b) That parcel No. West Kubia/3070,3071 and 3073 be cancelled immediately and their respective lands be enjoined to P.No. 3072 in the names of George Olum Obade as provided by Section 11 (b) of the Act. Whoever is aggrieved may lodge an A/R objection when the Adjudication register is published complete and 60 days objection period given.

ii. The Honourable court be pleased to issue an order of MANDAMUS directed at the District Land Adjudication and Settlement officer for Suba District compelling him to implement the abovementioned

directives given by the Director of Land Adjudication and Settlement as above set out.

iii. The Honourable court be pleased to issue an order of PROHIBITION directed at the District Land Adjudication Officer prohibiting him from disobeying the directive issued by his Senior, the Director of Land Adjudication and Settlement.

iv. The Honourable court be pleased to issue an order for costs to be awarded to each of the applicants.

2. The application is anchored on the ex parte applicant's statement, affidavit verifying statement and documents marked JO-1 to JO-12 which include letters dated 28<sup>th</sup> October 2003 by the Director of Land Adjudication, The grounds of the application are :

a) The District Land Adjudication Officer for Suba District has refused and or neglected to perform duties and responsibilities placed upon him by law in the manner prescribed by law.

b) The District Land Adjudication Officer for Suba District contrary to rules of administration and the chain of Command refused to enforce a lawful order issued by his Senior Officer, the Director of Land Adjudication and settlement.

c) The property rights of the applicant and members of the family of George Olum Obade, deceased, have been adversely affected by the said disobedience of lawful order.

d) The actions done by the District Land Adjudication and Settlement Officer in subdividing the land awarded to George Olum Obade by a court of law and creating four new titles and refusing to cancel them is illegal and ultra vires.

3. Briefly, the ex-parte applicant's case is that he is the administrator of estate of his father George Olum Obade (Deceased) pursuant to limited grant of letters of administration ad litem issued on 19<sup>th</sup> February 2009 in Homa-Bay Senior Resident Magistrate's Court succession cause number 172 of 2009. That his deceased father, George Olum Obade had obtained a decree in Homa- Bay SRM's court Civil case number 61 of 1990 against Nyangweso Sibuur (Deceased), who is related to the interested parties in this matter for the subdivision and registration of the suit land parcels. That the directives of the Director of Land Adjudication and Settlement issued to the District land Adjudication and settlement officer Suba District by his letter dated 14<sup>th</sup> June 2007 reference No. DS/1/47/45/15 have not been implemented thus provoking the instant application/motion.

4. There was no response to the motion by either the respondents or the interested parties.

5. The motion was urged by written submissions. The ex-parte applicant's counsel filed submissions dated 6<sup>th</sup> March 2012. Counsel cited **Sections 2,25,30 (3) and (4) of the Land Adjudication Act (Cap 284), Section 27 (2) of the Civil Procedure Act (Cap 21), Articles 73 and 75(2) of the Constitution of Kenya, 2010** in support of his submissions.

6. Counsel further submitted on the meaning of Mandamus and prohibition orders. He relied on the cases;-

i. **(1960) E.A. 109 The District Commissioner, Kiambu V- Rex and others, Exparte Ethan Njau.**

ii. **(1968) E.A. 258 Masaka Growers Union V- Mumpiwakoma Growers Society.**

7. I consider the entire motion and submissions by the ex-parte applicant. I take into account the **Articles of the Constitution, 2010**, the **DC Kiambu and Masaka cases (supra)** and sections of the law cited in the submissions. Has the ex-parte applicant proved his claim for the reliefs sought in the motion?

8. Notably, the ex-parte applicant is entitled to fair administration action in the matter as provided for under **Article 47of the Constitution of Kenya, 2010**. The Director of Land Adjudication and settlement and the District Land Adjudication and settlement officer, Suba are obliged to comply with the decision of the court (marked JO-2A and JO-2B) accordingly.

9. The ex parte applicant's claim stand unchallenged; see **Linus Ng'ang'a Kiongo and 3 others -V- Town Council Of Kikuyu (2012) eKLR.**

10. I find that the ex-parte applicant has proved his claim in the motion to the required standards. He is entitled to the orders sought therein.

11. Wherefore, orders of Mandamus and prohibition in the terms sought in a notice of motion dated 15<sup>th</sup> March 2010 be and are hereby allowed in favour of the ex-parte applicant.

12. By dint of provisio to section 27 (1) of the Civil Procedure Act (Cap 21), cost follow the event. In view of the nature of the motion and the decision in **Samwel Kamau Macharia and another -v- KCB and 2 others (2012) eKLR** each party to bear their own costs.

**DELIVERED, DATED and SIGNED at MIGORI this 27<sup>th</sup> day of February 2019.**

**G.M.A. ONGONDO**

**JUDGE**

**In the presence of: -**

Mr. Owade Learned counsel holding brief for Mr. Samwel Nyauke for the ex-parte applicant

Tom Maurice – Court Assistant.