



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. MISC. APPLN. NO. 95 OF 2004

REPUBLIC.....APPLICANT

VERSUS

DIRECTOR OF LANDS ADJUDICATION.....1ST RESPONDENT

CHIEF LAND REGISTRAR.....2ND RESPONDENT

DISTRICT COMMISSIONER, MWINGI.....3RD RESPONDENT

AND

KAWILA NGIE.....1ST INTERESTED PARTY

NGOVI MUTWETI.....2ND INTERESTED PARTY

MUTEMI MWANGELE.....3RD INTERESTED PARTY

MULATYA MWANGELE.....4TH INTERESTED PARTY

MUTINDA NGOVI.....5TH INTERESTED PARTY

EX PARTE APPLICANT: ALEXANDER MWINZI MUTUNGA

JUDGMENT

1. In the Notice of Motion dated 16th July, 2004, the Ex parte Applicant is seeking for the following orders of Judicial Review:

a. That orders of certiorari be issued calling forth the decision of the 3rd Respondent dated 5th May, 2004 in Land Appeal Case Nos. 4 and 7 of 1994 and all subsequent orders and directives be brought to the High Court for purposes of being quashed and or set aside.

b. That an order of prohibition be issued directed at the 2nd and 3rd Respondents barring and restraining them from acting on or implementing the 1st Respondent's Ruling or holding in Land Appeals Nos. 4 and 7 of 1994 delivered on 5th May, 2004.

c. That an order of prohibition barring and restraining the 1st and 2nd Respondents from registering and or recording Parcels Nos. 1829 , 887 and 888 Mbondoni Adjudication Section in favour of Mutweti, Mutemi, Mwangele, Mulatya Mwangele, Mutinda Ngovi or any of their agents, employees, agents or associates.

d. That an order of mandamus do issue compelling the Minister for Lands and Settlement to reconstitute or appoint another authority to handle Appeals touching and concerning Parcels Nos. 1829, 887 and 888 Mbondoni Adjudication Section.

e. That an order of prohibition be issued directed at The Interested Parties barring and restraining them from evicting, destroying, and demolishing or in any way whatsoever interfering with the premises, the subject matter of these proceedings.

f. That costs of the proceedings be borne by the Respondents and Interested Parties.

2. The Application is premised on the grounds that the Appeals by the Minister were handled without following the rules of natural justice; that the 3rd Respondent was biased; that the Appeals were heard when Mutunga Kakuto and Ngie Mutweti were deceased and that the Applicant stands to lose his ancestral land where he has constructed a permanent home.
3. The Application is supported by the Statement of Facts of the Applicant who has averred that he is the registered owner of parcel number 912 Mbondoni Adjudication Section; that his father, Mutunga Kakuto (*deceased*) was the registered proprietor of parcel number 888 Mbondoni Adjudication Section and that his grandparents have been buried on parcel number 888.
4. The Applicant averred that the boundaries in respect of the two parcels of land were fixed by the clan elders in October, 1984 and that during the adjudication, parcel number 812 was given to Ngie Mutweti, the Interested Party's father.
5. When the Interested Party's father lodged a dispute with the Adjudication Committee, the Applicant averred that the Committee confirmed that parcel number 812 belonged to him and that the Committee ordered for the sub-division of parcel number 888 which created parcel number 887.
6. On Appeal to the Minister, the Applicant deponed that parcel number 1829 was given to the Interested Party's father and that his only homestead stands on the said land. The Applicant averred that the Minister erred by exceeding his jurisdiction; that the 3rd Respondent did not follow the rules of natural justice and that the 3rd Respondent was biased and proceeded to consider irrelevant factors in reaching his decision.
7. The 1st Interested Party filed a Replying Affidavit in which he deponed that he is the administrator of the Estate of Nicholas Ngie Mutweti who died on 24th January, 2001; that the late Ngige Mutweti participated in all previous proceedings in regard to the dispute herein and that he was represented by his brother in Appeals No. 4 and 7 of 1994 because he was deceased by then.
8. The 1st Interested Party averred that the Applicant was given a fair hearing by the District Commissioner; that parcels number 887 and 1829 have always belonged to her late husband and that the Application should be dismissed.
9. In his submissions, the Applicant's advocate submitted that the notes of the Minister's visit on the suit land are not captured in the proceedings; that the issue of fixing the boundaries was outside the mandate of the Minister and that the Minister did not consider the grounds of Appeal that were before him. The Respondents did not file submissions.
10. The Applicant is challenging the decision of the Minister that was made pursuant to the provisions of Section 29 of the Land Adjudication Act on the ground that the Minister did not abide by the rules of natural justice and that he was biased in his decision.
11. The proceedings before the Minister shows that the Applicant herein filed an Appeal in which he challenged the decision of the Land Adjudication Officer. The Interested Party's husband, Ngige Mutweti, having died, was represented by his brother, Ngovi Mutweti.
12. The proceedings shows that the Applicant was heard in respect of parcel number 1829 by the Minister and was duly cross-examined by the Interested Party's brother-in-law. After hearing both parties, the Minister delivered his Judgment in which he ruled that parcel number 1829 remains the property of Ngie Mutweti (*the Interested Party's husband*).
13. The proceedings further shows that the Minister (*District Commissioner*) considered the evidence of both of them; the evidence that was tendered before the Arbitration Board and the fact that the Applicant has been restrained from putting up a permanent building on the disputed land.
14. It is trite that the decision of the Minister is final as pertains to matters of law. However, an Appeal can be filed against the decision of the Minister in the Environment and Land Court on points of law. Where a Judicial Review Application is filed against the decision of the Minister, like in the current case, the court can only quash the decision if it is shown that the Minister did not have jurisdiction to deal with the matter, or the person affected by the decision was not heard or where the Minister made the decision without taking into account relevant matters or took into account irrelevant matters (*See Municipal Council of Mombasa vs. Republic & Umoja Consultant Ltd Civil Appeal No. 185 of 2001*).
15. A Judicial Review Court is prohibited to act as an appellate court which involve going into the merits of the decision itself-such as whether there was or there was no sufficient evidence to support the decision.
16. As I have already indicated above, the parties herein were heard by the Minister. In his decision, the Minister stated that the Appellant had not adduced any evidence to support the allegations. Indeed, the Minister went through the proceedings before the Land Arbitration Board and pointed out that the Appellant never called his four (4) uncles to testify before him or the Board.
17. Having given the parties in the Appeal a hearing, and having considered the evidence that was availed to the Land Arbitration Board, I find that the Applicant has not established the grounds required for an order of certiorari and prohibition to issue.
18. For those reasons, I dismiss the Notice of Motion dated 16th July, 2004 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 15TH DAY OF FEBRUARY, 2019.

O.A. ANGOTE

JUDGE