



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAKURU

JR NO. 133 OF 2011

REPUBLIC.....APPLICANT

VERSUS

THE DISTRICT COMMISSIONER NAROK NORTH

DISTRICT.....1ST RESPONDENT

AND

TOBIKO OLE MUTUIYA.....INTERESTED PARTY

EXPARTE KANYIKE OLE KIPEES

RULING

(Application to correct judgment so that it may reflect the correct case that was in issue; application allowed).

1. The application before me is that dated 16 January 2019 filed by the ex-parte applicant. The application is said to be brought pursuant to the provisions of Sections 1, 1A, 1B, 3, 3A, 99 and 100 of the Civil Procedure Act, and Order 51 of the Civil Procedure Rules. It seeks the following orders :-

i. Spent (certification of urgency);

ii. That this Honourable Court be pleased to amend both the order and judgment issued by the Honourable Court on the 8th June 2017 and 16th May 2017 respectively which allowed the Notice of Motion dated 23rd November 2011 in terms of prayer 1 to correct, read and reflect the Ministry of Land and Settlement Appeal Case NO. 260 of 2007 instead of 260 of 2011.

iii. That this Honourable Court be pleased to issue any orders as are just and expedient in the resultant of the above orders.

2. To put matters into perspective, the suit herein is a judicial review motion through which the applicant asked for the following orders :-

(i) That this Honourable Court be pleased to issue an order of certiorari to remove into the High Court and quash the decision of the District Commissioner, Narok North District acting by virtue of the delegated powers of the Minister of Lands and Settlement, in Appeal No. 260 of 2011, delivered on 30th September 2011.

(ii) That costs be awarded to the applicant.

3. In the motion, the ex-parte applicant averred that he is the proprietor of the land described as Plot No.330 within Cis Mara Olosholesito Adjudication Section. The land was initially owned by his late father, Motika ole Kipees (the deceased) and before he died, he had subdivided the plot into two portions, being No. 330 and No.773. The ex-parte applicant kept the plot No.330 whereas his brother, Motaka ole Kipees was given the plot No. 773. These changes were reflected in the adjudication record and the deceased ceased being the owner. The interested party, Tobiko Ole Mutuiya, filed an objection to the Land Adjudication Officer, Narok, being Objection No. 96 of 1997, claiming that the Plot No. 330 is superimposed on his Plot No. 225. The deceased was named as the respondent in the objection proceedings whereas the brother of the ex-parte applicant, Motaka Ole Kipees, was named as representative of the deceased in the objection. The ex-parte applicant contended that he was never informed of the objection proceedings and he did not participate in the same. The Land Adjudication officer dismissed the objection but being dissatisfied, the interested party appealed to the Minister in Appeal No. 260 of 1997. The appeal was heard by the District Officer under delegated powers and was allowed on 30 September 2007. The applicant filed the proceedings herein to quash the decision of the Minister inter alia for the reasons that neither the deceased nor his brother Motaka, had capacity to be sued as

they are not the owners of the Plot No. 330.

4. The matter was heard and determined by my brother, Angima J, who had visited Nakuru for Service Week (an exercise conducted to decongest courts of old matters) and judgment was delivered on 16 May 2017. The motion was allowed with the Judge holding that the ex-parte applicant was not heard and the rules of natural justice were thus breached. The Judge directed the interested party to prefer an appeal to the Minister on the same subject matter within 60 days of the judgment.

5. A decree was extracted on 8 June 2017. The same followed the terms of the judgment and specifically that the decision of the Minister in Appeal No. 260 of 2011 delivered on 30 September 2011 has been quashed by an order of certiorari.

6. It will be noted that in this application, the applicant wants the judgment and decree amended so as to reflect that what was quashed was Ministry of Land and Settlement Appeal Case No. 260 of 2007 and not 260 of 2011. In his supporting affidavit, the applicant has averred that this was a typographical error as the appeal was actually No. 260 of 2007. Because of the error, he has been unable to derive the benefit of the judgment.

7. The 2nd respondent filed Grounds of Opposition to oppose the motion. It is pointed out that the applicant specifically asked for orders to quash the decision of the Minister in Appeal No. 260 of 2011 which prayer was granted and thus the judgment of this court is not erroneous. However, at the hearing of the Motion, Ms. Cheruiyot, learned State Counsel, while addressing the court, stated that the motion may be allowed. Nothing was filed by the interested party.

8. I have gone through the motion. There is no question that despite the ex-parte applicant citing in his motion that he needed quashed the decision in Appeal Case No. 260 of 2011, what really was in issue in the suit was the case Appeal Case No. 260 of 2007. The decision that was presented before court, and annexed to the suit papers, even when the application seeking leave to commence judicial review proceedings was sought, was Appeal Case No. 260 of 2007 but the same was described as Appeal Case No. 260 of 2011. It is the same appeal, that is Appeal No. 260 of 2007, that arguments were taken in, and the same appeal that the court wrote judgment on. It turns out that all parties referred to the appeal as Case No. 260 of 2011 and not No. 260 of 2007 but there was no doubt about what was in issue or what appeal was being determined. There was indeed no Appeal No. 260 of 2011 before court for the court to quash. I do not think any party will be prejudiced if the judgment is corrected so that it reflects for purposes of execution that what was quashed was Appeal No. 260 of 2007 and not Appeal No. 260 of 2011. I do not see the need of insisting that new proceedings be commenced all over again when it will not change anything for the substance of the judgment was on the correct case only that it was mis-described. To me, it is a case of misnomer.

9. Given the above, I allow the application. The judgment and decree may be corrected to reflect that what was quashed was Minister's Appeal No. 260 of 2007 and not No. 260 of 2011.

10. There will be no orders as to costs.

11. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 28th day of March 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. Koome for the ex-parte applicant.

No appearance for respondents.

Ms. Nancy Njoroge holding brief for Mr. Musembi Ndolo for interested party.

Court Assistant :Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU