



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. MISC. APPLN. NO. 159 OF 2004

REPUBLIC.....APPLICANT

VERSUS

THE MINISTER FOR LANDS AND SETTLEMENT.....RESPONDENT

AND

JOSEPH SIMON KITULI.....INTERESTED PARTY

EX-PARTE APPLICANT:.....MUTHUI MAKAU SYUMA

JUDGMENT

1. In the Notice of Motion dated 25th October, 2004, the Ex-parte Applicant has sought for the following orders of Judicial Review:

a) That an order of certiorari do issue to call into this court and quash the decision of the Minister for lands and Settlement in respect of Land Parcel No. 1149, Mwingi Adjudication Section, in Ministers Appeal Case No. 339 of 2001, between Muthui Makau Syuma and Joseph Simon Kituli, dated 25th June, 2004, which awarded the disputed land to the Interested Party.

b) That costs of this Application be provided for.

2. The Motion is supported by the Affidavit of the Applicant who has deponed that he was the Appellant in the Appeal before the Minister in respect of land parcel number 1149 in Mwingi Adjudication Section; that pursuant to the decision of the panel of Elders which was affirmed by the High Court in HCCA No. 34 of 1986, the Resident Magistrate issued eviction orders against the Interested Party and that when adjudication was declared in the area, the land was recorded in accordance with the decisions of the court.

3. The Ex-parte Applicant deponed that when the Interested Party filed Objection proceedings, the Land Adjudication and Settlement Officer awarded him the land and that when he filed an Appeal with the Minister, the decision of the Minister went against the decisions of the courts and the law. The Applicant deponed that the Minister acted in excess of his powers by purporting to overrule the decisions of the court and that in any case, the original claimant having died, the Interested Party could not have dealt with the dispute without Letters of Administration.

4. The Interested Party swore a Replying Affidavit in which he deponed that the suit land belonged to his deceased father, Titus Kituli Kawola; that the Arbitration Committee and the Board awarded the suit land to him and that the Minister considered all the court proceedings before arriving at his findings.

5. Neither the Applicant nor the Interested Party filed submissions in respect to the Notice of Motion.

6. The Applicant in this matter is challenging the decision of the Minister in respect of parcel number 1149. The said Appeal emanated from the decision of the Land Adjudication Officer. In the decision of the Land Adjudication Officer, the issue of the long running dispute between the Applicant and the Interested Party's relatives, including his deceased father, was considered. The Land Adjudication Officer, after considering the evidence before him, including the past decisions of the courts, found that the disputed parcel of land belonged to the Interested Party's family.

7. The Applicant is challenging the decision of the Minister on the ground that he did not consider the decisions of the courts while arriving at his decision, and that the Interested Party did not have Letters of Administration when he filed the Appeal. I have gone through the handwritten decision of the Minister dated 25th June, 2004. The said decision clearly shows that just like the Land Adjudication Officer, the Minister considered all the decisions of the courts, including the first decision of the panel of elders. That being the case, it is erroneous for the Applicant to state that the Minister did not take into consideration the decisions of the court.

8. Although there is no evidence before me to show that the decision of the Minister was contrary to the earlier decisions of the court, the Minister, while dealing with an Appeal under the Land Adjudication Act, was not bound by those decisions. The Minister's decision under the Act is not only final, but is supposed to be independent of the previous decisions. All the Minister is required to do is to take into consideration those decisions as a relevant factor, and arrive at his own independent decision. That is what the Respondent did in this matter.

9. The Applicant has argued that the Appeal before the Minister was a nullity because the initial claimant in respect of the suit land was the Interested Party's father (*deceased*). It was the Applicant's case that the Interested Party was required to obtain the Letters of Administration in respect of his father's Estate for him to have the *locus standi*.

10. To deal with the issue of the *locus standi* of parties in proceedings under the Land Adjudication Act, the purpose of the Act has to be contextualized. In the case of *Mukungu vs. Mbui Civil Appeal No. 281 of 2000 (2004) 2 KLR 256*, the Court of Appeal held as follows:

“The very purpose of subjecting land, hitherto held under customary tenure, to the process of land consolidation under the Land Consolidation Act or the Land Adjudication Act and subsequently registering it under the Registered Land Act is ipso facto to change the land tenure system which would have been ascertained and recorded before registration... In this case, the land was ancestral land that devolved from the father... It is a concept of intergenerational equity where the land is held by one generation for the benefit of the succeeding generations.”

11. In the case of *Republic vs. District Commissioner Machakos & Another Ex parte Kakui Mutiso (2014) eKLR*, Odunga J. held as follows:

“In my view, under the land consolidation and adjudication processes, the issue before the relevant tribunals is the determination of interest in land rather than individual ownership since individual land tenure only comes into being on registration. Therefore, before registration the land in question is either ancestral or falls under any other form of communal ownership i.e. Trust land. In such instances, it is my view that the application of the strict succession legal regime does not apply since in my view the issue of Estate may not be readily applicable to ancestral or communal property as such...”

12. I am in agreement with the above decision. To the extent that the land under adjudication is communally owned until the rights of individuals have been ascertained, any member of the family or community can commence proceedings before the Land Adjudication Officer or the Minister without obtaining the Letters of Administration. The land in question cannot form part of the Estate of the deceased unless and until the register is complete in an adjudication area.

13. Consequently, it does not matter that by the time the matter escalated to the Minister on Appeal, the Interested Party's father was dead. The Interested Party did not require the Letters of Administration to pursue the interest in the suit land notwithstanding the fact that it was his father who participated in the initial proceedings.

14. For those reasons, I find that the Applicant has not raised valid grounds to merit the orders sought. Consequently, the Notice of Motion dated 25th October, 2004 is dismissed with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 8TH DAY OF MARCH, 2019.

O.A. ANGOTE

JUDGE