



**REPUBLIC OF KENYA**

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

**ELC (JR) NO. 23 OF 2008**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW FOR AN ORDER OF CERTIORARI & PROHIBITION.**

**AND**

**IN THE MATTER OF SECTIONS 8 AND 9 THE LAW REFORM ACT CAP 26,**

**IN THE MATTER OF LAND CONSOLIDATION ACT CAP 283 AND**

**IN THE MATTER OF THE LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA**

**AND**

**IN THE MATTER OF ADJUDICATION REGISTER (AR) OBJECTIONS NO.S 19, 976, 960, 620, & 37 AGAINST PARCEL NO 98 – URINGU 1, ADJUDICATION SECTION.**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VS**

**DIRECTOR OF LAND**

**ADJUDICATION & SETTLEMENT.....1ST RESPONDENT**

**THE LAND ADJUDICATION OFFICER.....2ND RESPONDENT**

**ZACHARIA M'MUNGANIA M'IRINGO.....3RD RESPONDENT**

**M'IKAMATI M'NDETHI.....1ST INTERESTED PARTY**

**JEREMIAH MUKURU.....2ND INTERESTED PARTY**

**GIDEON KEBERIA M'IBURI.....3RD INTERESTED PARTY**

**M'ANJURI M'IBUI.....4<sup>TH</sup> INTERESTED PARTY**

**EXPARTE APPLICANT.....DOMIZIANO RATANYA**

**JUDGMENT**

1. By leave of the Court granted on 16/6/2008 the Applicant filed a Notice of Motion on the 24/6/2008 under Order 53 Rule 1 of the Civil Procedure Rules and Section 8 and 9 of the Law Reform Act, Cap 26 of the Laws of Kenya. He sought the following orders;

a. This Court be pleased to issue the orders of certiorari to bring before this Court for being quashed the decision of the Land Adjudication Officer of Igembe/Tigania Uringu 1 adjudication Section objections No.s 19, 960, 620, 37 and 976.

b. This Court be pleased to issue an order of prohibition prohibiting the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents from acting on and or implementing the decision made by the 3<sup>rd</sup> Respondent in respect of the objection named in (a) above.

c. The costs of this application.

2. The grounds of the application are summarized as follows;

a) That the 3<sup>rd</sup> Respondent acted unfairly and contrary to the rules of natural justice.

b) The 3<sup>rd</sup> Respondent failed to act judicially and judiciously in the discharge of his duties.

c) The decision of the 3<sup>rd</sup> Respondent was unreasonably unfair and based on extraneous considerations.

d) The 3<sup>rd</sup> Respondent lacked the necessary jurisdiction to entertain and deliberate on the objections as he did.

3. In addition, the application is supported by the statutory statement and the verifying affidavit dated 17/12/2008. In the statutory statement he describes the Interested parties as the persons who lodged various objections in respect of parcel No 98 which objections were heard and determined by the 3<sup>rd</sup> Respondent on diverse dates in December 2007.

4. In his verifying affidavit, the Applicant deponed that he is the owner of Parcel No 98 within Uringu 1 adjudication section. That the land is part of his ancestral land. He asserts that he has fully developed the land and has lived on it even before and after the adjudication process to date.

5. He contends that there have been various disputes over the suit land dating way back to 1966 and has been winning against the Respondents. That the Respondents raised various objections before the African Court in 1966 upon which a ruling was delivered clearly demarcating the portions of land to be occupied by each family. The same position was adopted by the Land Adjudication officer through objection No. 750 in 1985. That no appeal has been preferred against that decision of the Land Adjudication officer to date. In the premises he therefore contends that his ownership of land parcel No.98 remains unchallenged. He averred that the case referred to by the objectors was decided before the establishment of the adjudication section and has nothing to do with the consolidated land parcel No.98. He disputed that the adjudication tribunal lacked the requisite quorum to deliberate on the case on the material day. He claims that when the land consolidation and demarcation was done in 1991, there was no outstanding dispute in respect to the suit land. That he won another case with the father of the 7<sup>th</sup> Respondent relating to the land dispute.

6. The 1<sup>st</sup> Interested Party deponed that he raised objection No 19 against parcel 98 measuring 10.10 acres which the Applicant refused to abide with the decision issued in Magistrate Land appeal No 34 /L/65. In respect to the proceedings that took place on the 4/12/07, he averred that they were served with summons dated the 27/11/07 in respect to objection No 19 parcel 98. That the Applicant failed to appear and the matter proceeded ex parte. He conceded that the suit land has been a subject of many land disputes some of which have never been appealed against.

7. The 2<sup>nd</sup> Interested Party claimed that the Applicant had been allocated a portion of land that belonged to him on parcel No. 811 (1 acre 21 points) and the Applicant had failed to attend the hearing hence the verdict was given in his absence. The 5<sup>th</sup> Respondent claims the suit land is his ancestral land. They denied that the 3<sup>rd</sup> Respondent acted in breach of natural Justice. They fault the Applicant for failing to honour the summons to appear before the 3<sup>rd</sup> respondent.

8. The 3<sup>rd</sup> Interested Party in his replying affidavit dated the 10/7/2009 claimed that the land is his ancestral land. That he and the Applicant were notified of the hearing of the case before the 3<sup>rd</sup> Respondent but that the Applicant chose to absent himself. He absolved the 3<sup>rd</sup> Respondent from any wrong doing and he averred that the proceedings were conducted in a fairly and in accordance with the law. He stated that he was not a party to Objection No 960 which he asserts was between the Applicant and the 3<sup>rd</sup> interested party.

9. The 4<sup>th</sup> Interested party averred that his grandfather gathered land parcel No 98 and after his death, it was inherited by his father. That the Applicant who is a former District Officer and a member of the defunct Electoral Commission of Kenya used his power and influence to grab the land from his father. That the Applicant did not win the case in 22/68. That it was won by his grandfather. That the Applicant was served with summons to attend the hearing but he ignored them and the award was given in his favour. That this application is premature as the Applicant has not exhausted the appeal mechanism as provided for in the Land Adjudication Act, cap 284.

10. The 5<sup>th</sup> Interested party opposed the applicants motion vide a letter dated the 5/11/18 where he stated that in respect to objection No 3726 the Applicant was physically present as the Respondent in the case. It is noteworthy that this objection is not one of the objections being challenged by the applicant.

11. On the 11/1/2010 the Applicant filed an application to amend the statement of facts and for leave to file further verifying affidavits. I have perused the record and have not seen the leave of the Court in respect to this application. I shall proceed to determine the instant JR based on the Notice of Motion filed on the 24/6/2008.

12. The 1<sup>st</sup> – 3<sup>rd</sup> Respondents did not oppose the application. They did not file any responses to the motion either.

13. The Applicant submitted that he gathered the original land fragments and was allocated parcel No 98 in 1991. That the 1<sup>st</sup> -5<sup>th</sup> Interested Parties filed objections 19,976,960 and 37 which objections were heard and determined on the 14/12/07, 17/12/07 and 29/11/07 in his

absence. He states that he was not notified of the hearings and only learnt about them from the demarcation officer upon which he sent a letter to the DLASO on the 4/12/07 that he would be sitting exams at the Kenya School of Law and therefore unable to attend the hearings. That he was adjudged without being heard and his right to fair hearing was violated.

14. Relying on the case of **Council of civil service unions Vs Minister for the civil service (1984) 3 ALL ER 935** which was quoted in **Republic Vs Kenya Power & Lightning Company Limited & Anor (2013) EKLR**, he stated that judicial review concerns itself not the process but with the decision itself.

15. He maintains that the 3<sup>rd</sup> Respondent flouted the provisions of section 9 and 26 of CAP 283 by not including the members of the committee in making the decision. He contends that by making the decision singly, he acted contra the provisions of the said law. That by excluding the Applicant from the proceedings, the 3<sup>rd</sup> Respondent acted in a manner that is malicious, biased and compromised.

16. He castigated the Respondents for not responding to the application and yet the motion is challenging its processes and decisions and they ought to have presented their side of the case. He urged the Court to take the case of the Respondents as uncontroverted.

17. The 1<sup>st</sup> interested party submitted in summary as thus; the grounds in respect to section 26 of the Limitation of Actions Act was not part of the grounds relied by the Applicant in the main motion and is not allowed to introduce it midway; there is no evidence that the Applicant was participating as an examiner or as a student at the Kenya School of law as alleged by the applicant; further there is no evidence that the letter dated the 4/12/07 was received by the DLASO; that the Applicant was aware of the hearing dates and absented himself voluntarily and cannot now claim to have been denied a hearing; the dispute surrounding the land parcel 98 was determined vide Meru Magistrate land appeal No 34/L/65 which decision has never been appealed; this application is an attempt by the Applicant to appeal against the said decision.

18. The 2<sup>nd</sup> Interested party agreed with the 1<sup>st</sup> Interested party's submissions and added that the decision that the Applicant is seeking to quash or challenge has not been annexed rendering the application incompetent and fatally defective.

19. The 3<sup>rd</sup> interested party submitted that the application is poorly drafted creating a confusion in respect to the description of the parties. For example, the Interested parties are named as respondents making it difficult to defend the case. He joined ranks with the 2<sup>nd</sup> Interested party that the application is defective and incompetent on account that the decision being sought to be quashed has not been placed before the Court and the parties.

20. The 5<sup>th</sup> Interested party summarized his submissions that the Applicant was aware of the date of the hearing of the objections as he was served with notices. That section 26 (2) of the Limitation of Actions Act does not require the DLASO to involve any committee in determining the objections. That the subject land is under the Limitation of Actions Act and not the Land Consolidation Act. The Applicant has prematurely moved the Court before exhausting the laid down appeal mechanisms provided for under section 29 of the Limitation of Actions Act.

21. The Respondents did not file any submissions despite being represented by a state counsel namely Mr. Kiongo.

22. Having considered the application, the supporting affidavits, the grounds thereto, the replying affidavits and rival submissions the issues that fall for determination are;

- a. Whether the application is incompetent on account of failure to annex the decision of the 3<sup>rd</sup> Respondent.
- b. Whether the Applicant was notified of the hearing of the objections.
- c. Whether the 3<sup>rd</sup> Respondent acted contrary to section 26 of the Limitation of Actions Act and /or Land Consolidation Act.
- d. What orders should the Court make
- e. Who meets the costs of the application?

23. First may I point out that the application is stated to be brought both under Land Adjudication Act and Land Consolidation Act. According to the preamble of the Land Consolidation Act, Cap 283, it states as thus;

“ an Act of Parliament to provide for the ascertainment of rights and interests in, and for the consolidation of, land in the special areas; for the registration of title to, and of transactions and devolutions affecting, such land and other land in the special areas ; and for purposes connected therewith and incidental thereto”.

24. Similarly, the opening prelude of the Land Adjudication Act Cap 284 has this to say;

“An act of parliament to provided for the ascertainment and recording of rights and interests in trust land and for the purposes connected therewith and purposes incidental thereto.”

25. The reading of the objects of the two pieces of legislation is that they serve separate and exclusive purposes. The application as drafted appears to suggest that the parcel No 98 is both under Limitation of Actions Act and Land Consolidation Act. The two acts provide different

provisions for the manner in which the adjudication processes are carried out. They are not similar in their entirety. It is trite that a party is bound by his own pleadings. The pleadings must be clear and certain to enable the opponent to respond with the same clarity, more so in land matters where the outcome may lead to depriving one the right to the all so important factor of production; land.

26. The Court holds that the application as drafted is incompetent in that regard.

27. The Applicant in his statutory statement and the notice of motion has stated that he is seeking to challenge the decision of the 3<sup>rd</sup> Respondent in objections Nos 19,960,620,37,976. The Court has carefully perused the record and concurs with the Interested parties that the Applicant did not annex both the awards nor the proceedings so as to afford the respondents as well as the interested parties the opportunity to respond. The heart of the application is the proceedings and the awards in the said objections. Some of the interested parties have complained of being lumped together in one application in respect to proceedings that took place at various dates thus creating hardship in the manner in which they should present their defenses.

28. The Court finds and holds that the application is incompetent so much so that there is no need to consider the other issues stated in Para 21.

29. In the end the application is incompetent and is hereby struck out with costs payable by the exparte Applicant.

**Orders accordingly**

**DELIVERED, DATED AND SIGNED AT MERU THIS 8<sup>TH</sup> DAY OF APRIL 2019**

**J.G. KEMEI**

**JUDGE**

**In presence of;**

Muchiri holding brief for B.G Kariuki for applicant

Muriira for 1<sup>st</sup> interested party

Maheli holding brief for Kiome for 2<sup>nd</sup> interested party

Muchiri for 3<sup>rd</sup> interested party