

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ELC MISC NO. E006 OF 2023
IN THE MATTER OF LAND ADJUDICATION ACT
AND
IN THE MATTER OF KYAMUOSO ADJUDICATION SECTION
AND
IN THE MATTER OF AN APPLIATION FOR ORDERS OF
MANDAMUS, CERTIORARI AND PROHIBITION
REPUBLIC.....APPLICANT
-VERSUS-
THE DEPUTY COMMISSIONER KILUNGU
SUBCOUNTY.....1ST RESPONDENT
THE LAND ADJUDICATION OFFICER KYAMUOSO
ADJUDICATION SECTION.....2ND RESPONDENT
STEPHEN KIOKO JOSEPH.....EXPARTE
APPLICANT
EZEKIEL MWAKA MUSAU..... INTERESTED
PARTY

RULING

1. This is a ruling in respect of a chamber summons dated 14th April, 2023 in which the Ex-parte Applicant is seeking leave to commence judicial review proceedings in respect of the Minister’s decision rendered on 30th November, 2022.
2. This application should have been sorted way back in 2023 were it not for the inaction by the Ex-parte Applicant. The application for leave was filed on 14th April, 2024, the Ex-parte Applicant filed a notice of intention to act in person. On the same date the Ex-parte Applicant filed another application dated 27th February, 2024 in which he was seeking orders that this application be heard alongside the chamber summons dated 14th April, 2023.
3. The Ex-parte Applicant did not take any step to prosecute the two applications pending. The court issued notice to show cause why the applications should not be dismissed. The notice to show cause was set down for hearing on 13th June, 2024. No one showed up on 13th June, 2024. The court proceeded to dismiss the applications for want of prosecution.

4. The Ex-parte Applicant made an application to set aside the dismissal order of 13th June, 2024. This application was allowed vide ruling delivered on 30th May, 2025.
5. The Ex-parte Applicant caused confusion when he filed a notice of motion dated 27th February, 2024 when there was another one dated 14th April, 2024. This is because he had filed the application in person having filed a notice of intention to act in person. When he appointed his current advocates, they do not seem to have perused the court record to see the existence of the application dated 14th April, 2024. However be that as it may, the parties have submitted on the application of 14th April, 2024.
6. The history of this matter can be traced to the time the Ex-parte Applicant's grandfather and father sold land to the Interested Party. This was before Kyamuoso was declared an adjudication section. When Kyamuoso area was declared an adjudication section, the parcel purchased by the Interested Party were recorded in his favour. The Ex-parte Applicant then filed an objection to the Land Adjudication Officer which was dismissed. The Ex-parte Applicant filed an appeal to the Minister which appeal was again dismissed.
7. I have looked at the orders which the Ex-parte Applicant intends to pray for if leave is granted. He wants to have orders of certiorari to quash the decision of the Minister rendered on 30th November, 2022. He wants to refund the Kshs.25,000/= paid by the interested Party so that he can retain the land. He also wants an order prohibiting the Adjudication Officer Kyamuoso Adjudication Section from declaring that the adjudication register in respect of plot 1625 is complete and further that an order be given directing the Adjudication Officer to establish boundaries between parcel Nos. 1625 and 1662.
8. I have considered the decision of the Minister which shows that during the hearing, the Ex-parte Applicant's father had acknowledged that the land in issue belonged to the Interested Party. He sought permission to bury his wife

on the land. The Ex-parte Applicants had filed a suit being LEC No. E022 of 2021 seeking similar orders touching on the Minister's decision.

9. I have considered the submissions filed herein. As I said hereinabove, this was a simple application for leave to commence judicial review proceedings which ought to have been concluded in 2023 were it not for the actions of the Ex-parte Applicant. The Interested Party's submissions are like he was submitting on the substantive motion. The issue herein is whether leave should be granted.

10. It is clear that the Ex-parte Applicant is intent on refunding the money paid by the Interested Party. It is not that the Minister failed to act as required of him. The father and the grandfather of the Ex-parte Applicant sold land. This fact is not disputed. The Ex-parte Applicant alleges that the Kshs.25,000/= was given pending measuring of the land and ascertainment of the value. This is not a matter for judicial review. Whether or not the boundaries were properly fixed by the Adjudication Officer is not a matter to be determined in a judicial review. For this reason I decline to grant leave to the Ex-parte Applicant. Consequently, the applications dated 27th February, 2024 and that of 14th April, 2024 are hereby dismissed with costs to the Interested Parties.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 11TH DAY OF DECEMBER, 2025.

IN THE PRESENCE OF:

Mr. Hassan for Ex-parte Applicant.

Ms. Kabira for Mr. Murango for Interested Party

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