



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. MISC. APPLN. NO. 92 OF 2017 (JR)

REPUBLIC.....APPLICANT

VERSUS

THE HON. ATTORNEY GENERAL.....RESPONDENT

DUNCAN MWENDWA NZOMO.....INTERESTED PARTY

EX PARTE APPLICANT.....JACKSON MUSYOKI NDILO

JUDGMENT

1. In the Notice of Motion dated 26th February, 2018, the Ex-parte Applicant is seeking for the following reliefs:

a. That an order of certiorari do issue to recall into this court and quash the decision of the Deputy County Commissioner, Kitui West Sub County, Kitui County in Minister's Appeal Case No. 134 of 1990 over land parcel No. Mutonguni/Musengo/3090 dated 11th July, 2017 awarding the said land to Nzomo Mwengi (deceased) in place of the Applicant.

b. That the costs of this Application be provided for.

2. The Application is premised on the grounds that Nzomo Mwengi had died at the time of hearing of the Appeal; that Duncan Mwendwa Nzomo who conducted the Appeal on behalf of the deceased was not a legal representative of the deceased and that the said Duncan Mwendwa Nzomo was therefore a stranger in the proceedings before the Deputy County Commissioner, Kitui West Sub-County.

3. The 1st Respondent filed Grounds of Opposition in which he averred that the Applicant has not adduced evidence to show that Duncan Mwendwa Nzomo was not a son of Nzomo Mwengi (*deceased*); that the issue of representation of the deceased's Estate was not raised during the proceedings of the Appeal and that the parties before the Minister were competent and qualified. The 1st Respondent finally averred that the Letters of Administration are not a requisite document in proceedings under the Land Adjudication Act.

4. The Ex-parte Applicant's advocate submitted that no proceedings can be taken against a party who dies before the conclusion of a matter; that the Deputy County Commissioner was dealing with a case against a deceased Defendant and that the deceased Defendant was never substituted. The Applicant's counsel submitted that the Interested Party was not a proper party and that the proceedings before the Minister should be quashed.

5. The Attorney General submitted that the Deputy County Commissioner acted within the law when he allowed the Interested Party to take part in the proceedings after the death of Nzomo Mwengi; that being the son of the deceased, the Interested Party had an interest in parcel of land Mutonguni/Musengo/3090 and that the Interested Party was qualified to participate in the said proceedings. Counsel relied on the decision of *Republic vs. Land Adjudication Officer Igembe/Tigania Districts & 2 others (2013) eKLR* and the provisions of Sections 13 and 26 of the Land Adjudication Act.

6. The proceedings before the Minister (*the Deputy County Commissioner, Kitui West Sub-County*), shows that the late Nzomo Mwengi was the Defendant. However, upon his death, his son, Duncan Mwendwa, is the one who testified before the Minister. After hearing both parties, the Minister dismissed the Appeal and awarded the land to Nzomo Mwengi.

7. The Only ground that the Applicant is relying on to have the decision of the Minister quashed is that the son of Nzomo Mwengi, the Interested Party, did not have the Letters of Administration as at the time he testified on behalf of his late father. The issue of whether a party who has died while a matter is pending before the Minister ought to be substituted by someone who has Letters of Administration has now been settled. In the case of *Republic vs. Minister for Lands, Housing and Settlement Ex parte James Katiwa Sila (20102) eKLR*, the court held as follows:

“The process of land adjudication under the Land Adjudication Act is thus a much broader process than merely establishing title to land. It is an all-inclusive process designed to ascertain absolute ownership of Trust land and other rights prior to conferring title under the Registered Land Act, Cap 300. Such a process cannot be confined to legalistic requirements such as Letters of Administration. In any event, the Interested Party did not make claim on behalf of the Estate of his late brother Kisyanga but on his own behalf. The complaint that he did not have locus standi for want of Letters of Administration is thus without merit.”

8. Considering that Section 13(1) of the Land Adjudication Act allows every person who has an interest in land within an adjudication section to make a claim to the recording officer, it follows that a claim under Section 13 of the Act can be made by successors in title of the deceased. Such successors need not be the legal representatives of the deceased (*See Tobias Achoda Osidi & 13 others vs. Cypriano Otieno Ogola & 6 others – Kisii ELC. No. 4 of 2011*).

9. To the extent that the proceedings under the Land Adjudication Act are geared towards ascertaining and recording of rights and interests in Trust land, it follows that any person who has an interest in such land can testify, or lodge a claim on behalf of a deceased person. The strict rules of the Law of Succession Act are not applicable in proceedings under the Act.

10. For those reasons, the Ex-parte Applicant’s Notice for Motion dated 26th February, 2018 is unmeritorious. The Application dated 26th February, 2018 is therefore dismissed with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 14TH DAY OF JUNE, 2019.

O.A. ANGOTE

JUDGE