



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW MISC. APPLICATION NO. 29 OF 2017

IN THE MATTER FOR APPLICATION FOR LEAVE TO

APPLY FOR ORDERS OF JUDICIAL REVIEW IN

THE NATURE OF MADAMUS PROHIBITION & CERTIORARI

AND

IN THE MATTER OF CONSTITUTION OF KENYA

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

IN THE MATTER OF LAND ACQUISITION ACT, CAP 295 LAWS OF KENYA

IN THE MATTER OF CIVIL PROCEDURE RULES ORDER 53 RULES 1, 2, 3 & 4

BETWEEN

EDWARD KAIBIRIA.....1ST APPLICANT

BERNARD M'IMAGANA.....2ND APPLICANT

JULIUS KINOTI.....3RD APPLICANT

AND 52 OTHERS & ON THEIR BEHALF AND IN THE REPRESENTATIVE

CAPACITY ON BEHALF OF OTHER RESIDENTS OF RUIRI/RWARERA

ADJUDICATION SECTION OF MERU COUNTY

VERSUS

THE DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER,

IMENTI NORTH.....1ST RESPONDENT

THE MINISTRY OF LANDS.....2ND RESPONDENT

THE HON. ATTORNEY GENERAL.....3RD RESPONDENT

JUDGMENT

The Applicants commenced these proceedings by a Chamber Summons application under certificate of urgency dated 6th December 2017 seeking leave to apply for an order of certiorari to remove into this Honourable Court for purposes of quashing the decision of the 1st and 2nd Respondents from issuing titles over the applicants parcels of land at Ruiiri/Rwarera Area of Meru County before their A.R. objectives already lodged are heard and determined.

The Applicants third prayer is for them to be granted leave to apply for an order of certiorari to remove into this Honourable Court for quashing the decisions of the 1st and 2nd Respondents purportedly allocating third parties parcels of land belonging to and occupied by the Applicants and which are subject of A.R Objections and pending Adjudication.

The fourth prayer by the Applicants is an order of mandamus to compel the Respondents to comply with the Acquisition and Adjudication Act respectively and other relevant laws of the country. The fifth and last prayer is for leave so granted to operate as a stay of any dealings on the Applicants land.

When the application was placed before the duty Judge on 19th December 2017, the application was certified urgent. The Applicant was granted leave to apply for orders of certiorari and mandamus as sought. Finally the Court directed that the leave so granted do operate as a stay against any dealings on the Applicants land. The Court further ordered the Applicants to file the substantive motion within twenty one (21) days from the said date.

On 16th January 2018, the Applicants filed the substantive motion under **Order 53 Rule 3 (1) C.P.R as read with Section 8 and 9 of the Law Reform Act Cap 26 Laws of Kenya.**

On 7th November 2018, this matter came up for directions when Mr. Kiongo advocate for the Respondents was granted 14 days to file their response to the Applicants Notice of Motion. The matter was fixed for hearing on 4th December 2018. During the hearing on 4th December 2018, there was no attendance on the part of the Respondents. The Respondents had not also filed any response to these Judicial Review proceedings. The Court then directed the said Notice of Motion to be canvassed by way of written submissions. The Applicants were given 21 days to file and serve their submissions. The Respondents were also given similar period within which to file and serve their submissions. At the close of the timelines given, none of the parties had filed submissions.

I have considered the Notice of Motion dated 6th December 2018. I have also looked at the Chambers Summons dated the same date together with the supporting affidavit, statement of facts and numerous documents annexed thereto.

These proceedings are about Judicial Review where the Courts have stated again and again that Judicial Review is concerned with the decision making process and not the merits. In the case of **Republic Vs Kenya Revenue Authority Exparte Yaya Towers Limited (2008) e K.L.R.**, the Court held as follows:

***“The remedy of Judicial Review is concerned with reviewing not the merits of the decision of which the application for Judicial Review is made, but the decision making process itself. It is important to remember in such case that the purpose of the remedy of Judicial Review is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected*”**

The Applicants in the affidavit in support of the Notice of Motion sworn by Edward Kaibiria deponed that objection pertaining the section under adjudication were lodged but the same have not been heard to date. He annexed copies of receipts of payments for the alleged objection. The deponent also stated that some people have illegally encroached into other peoples land hence the objections that were filed. At paragraph 5 thereof, the deponent deponed as follows:

“5. That however, the Meru North District Land Adjudication and Settlement officer is preparing his records for issuance of titles even before the objections are heard”.

It is important to note that the **Land Consolidation Act** and the **Land Adjudication Act Cap 283 and 284 Laws of Kenya** have set out an elaborate processes of ascertaining rights and interests in land under **African Customary Law** (read trust land) and the mechanism of addressing grievances. **Section 26 of the Land Adjudication Act** which deals with objections reads as follows:

“26 (1) Any person named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer in writing saying in what respect he considers the adjudication register to be incorrect or incomplete”.

(2) The adjudication officer shall consider any objection made to him under sub-section (1) of this section, and after such further consultation and inquiries as he thinks fit he shall determine the objection”.

Before an objection is lodged, the adjudication register must have been completed pursuant to **Section 24 & 25** of the same Act. The said sections read as follows:

“24. The demarcation map and the adjudication record all collectively known as the adjudication register”

“25. When the adjudication register has been completed, the adjudication officer shall so certify on the adjudication record and demarcation map, and shall then –

(a) Deliver the duplicate adjudication record (bearing a copy of the certificate) to the director of Land Adjudication;

(b) display the original adjudication register for inspection at a convenient place within the adjudication section; and

(c) give notice that the adjudication register has been completed and may be inspected at that place during a period of sixty days from the date of the notice”.

Section 26 of the Land Adjudication Act states clearly that only persons named or affected in the adjudication register can lodge objection (s) within sixty (60) days of the date upon which the notice of completion of the adjudication register is published. The Applicants have not shown a notice of completion of the adjudication register. They have not also indicated to this Court whether they have brought themselves within the sixty days required for lodging of the objection.

I have noted with curiosity that the Applicants have not attached a copy of the consent given by the Adjudication officer concerned to institute these judicial proceedings pursuant to **Section 30 of the Land Adjudication Act**. That Section states as follows:

“30 (1) Except with the consent in writing of the adjudication officer, no person shall institute, and no Court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under Section 29 (3) of this Act”.

The provisions of that section are couched in mandatory terms. In the absence of consent from the Land Adjudication officer to institute these proceedings, this suit is a non-starter and must fail.

For all the reasons I have given, this suit is an abuse of the Court process, bad in law and is hereby dismissed with costs.

READ and SIGNED in open Court at Meru this 3rd day of June, 2019.

E.C. CHERONO

ELC JUDGE

3RD JUNE, 2019

In the presence of:

1. *Kimaita holding brief for Kaume for Applicants*
2. *Attorney General – absent*