



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW NO. 17 OF 2016**

**MESHACK MIRITI NGEERA.....EX-PARTE APPLICANT**

**VERSUS**

**LAND ADJUDICATION &**

**SETTLEMENT OFFICER.....RESPONDENT**

**SOLOMON K. MUTHURI.....INTERESTED PARTY**

**JUDGMENT**

These Judicial Review proceedings were commenced with a Chamber Summons application for leave to apply for an order of certiorari to remove into this Honourable Court the impugned decision of the Land Adjudication and Settlement Officer Tigania East District made on 8<sup>th</sup> June 2016 in objection No. 159 involving Land Reference No. 514 Adjudication Akaiga Section for purposes of quashing the same. The Ex-parte Applicant also sought an order to have the leave so granted operate as stay of further proceedings of implementation of the Land Adjudication & Settlement officer's decision. The reason advanced by the Ex-parte Applicant is that the impugned decision was made by the Land Adjudication and Settlement Officer without jurisdiction. That Ex-parte application was brought under certificate of urgency. When the matter was placed before the duty Judge, the same was not certified urgent but the Judge nevertheless granted the Ex-parte leave to apply for the orders of certiorari. The Judge allowed the leave so granted to operate as a stay of further proceedings or implementation of the Land Adjudication & Settlement officer's decision. On 21<sup>st</sup> July 2016, the Applicant filed the substantive motion under **Order 53 Rule 3 CPR as read with Section 8 and 9 of the Law Reform Act Chapter 26, Laws of Kenya**. Despite service of summons upon the Respondent and the Interested party, there was no response to the said Notice of Motion. When this matter came up for directions and after being satisfied that the Respondent and the Interested party were duly served, the Court directed that the Notice of Motion dated 20<sup>th</sup> July 2016 be canvassed by way of affidavit evidence and written submissions. The Applicant was given 21 days to file and serve the Respondent and the Interested party. The Respondent and the Interested party were also granted leave to file and serve their submissions within 21 days from the date of service thereof. At the close of the timelines given, only the Applicant complied by filing submissions within the timelines given.

I have looked at the Ex-parte Chamber Summons application dated 6<sup>th</sup> July 2016, the verifying affidavit by the Ex-parte Applicant sworn on 6<sup>th</sup> July 2016, the statement of facts dated the same date and copies of the proceedings and the impugned decision issued on 8<sup>th</sup> June 2016. I have also considered the submissions by the firm of Maitai Rimita & Co. Advocates for the Applicant and the applicable law. It is now settled that Judicial Review is only concerned with the decision making process and not the merits or decision itself.

That was the holding in the case of **Republic Vs Kenya Revenue Authority Ex-parte Yaya Towers Limited (2008) e K.L.R** where it was held:

***“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.....”***

Again in **Municipal Council of Mombasa Vs Republic & Umoja Consultants Ltd Civil No. 185 of 2001**, the Court of Appeal held as follows:

***‘Judicial review is concerned with the decision making process not with the merits of the decision itself; the Court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matter or did take into account irrelevant matters ..... The Court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself – such as whether there was or there was no sufficient evidence to support the decision’.***

Flowing from that decision of the superior Court, it is my discernment that this Court cannot therefore determine the issue as to who is the rightful owner of the suit land.

As regarding the issue that the Adjudication and Settlement officer had no jurisdiction to determine the objection on grounds that the objector had no letters of administration, **Section 13 of the Land Adjudication Act Cap 284** reads as follows:

**“13 (1) Every person who considers that he has an interest in land within an adjudication section shall make a claim to the recording officer, and point out his boundaries to the demarcation officer in the manner required and within the period fixed by the notice published under Section 5 of this Act”.**

**(5) Where several persons claim separately as successors of a deceased person, and one or more of those persons attend, this or their attendance shall be taken to be the attendance of all the successors, unless the adjudication officer otherwise directs .....**”

The **Land Adjudication Act** gives the Adjudication officer the discretion to determine all the persons who consider to have an interest in land including successors of deceased persons. It is the adjudication officer who is vested with powers under the Act to determine the interest of the person (s) who appear before him claiming interest in land.

That position was put into perspective by **Justice Odunga** in the case of **Republic Vs District Commissioner Machakos & Another Exparte Kakui Mutiso (2014) e K.L.R.**

**“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 adjudication officer who is vested with powers under the said Act to determine the interest of any person who may appear before him claiming interest or rights in land owned community”.**

When he was faced with a similar conundrum **Augote J.** in the case of **Republic Vs the Minister for Lands & Settlement Joseph Simon Kituli (Interested party) and Muthui Makau Syuma (Ex-parte Applicant) 2019) e K.L.R** held as follows:

**“In the case of Republic Vs District Commissioner Machakos & Another Ex-parte Kakui Mutiso (2014)e K.L.R, 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 of 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 by the time the matter escalates to the Minister on appeal, the Interested party’s father is 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”.**

Just as Angote J. was in agreement with the decision of Odunga J, I also totally agree with the decision and reasoning of the two learned Judges and have nothing useful to add.

For those reasons, I find that the Applicant has not shown any valid grounds to merit the orders sought. The Notice of Motion dated 20<sup>th</sup> July 2016 is hereby dismissed with costs.

**READ and SIGNED In open Court at Meru this 3<sup>rd</sup> day of June, 2019.**

**E.C. CHERONO**

**ELC JUDGE**

**3<sup>RD</sup> JUNE, 2019**

*In the presence of:*

1. M/S Rimita for the Ex-parte Applicant

2. *Attorney General – absent*

3. *Interested party - absent*