



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC – JUDICIAL REVIEW CASE NO. 04 OF 2019

IN THE MATTER OF AN APPLICATION BY GILBERT JOSEPH KABUNJIA FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDER OF CERTIORARI

AND

IN THE MATTER OF SECTION 8 AND 9 OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF LAND PARCEL NO. 2022 KAJUKI KAMUTIRIA ADJUDICATION SECTION

AND

IN THE MATTER OF APPEAL NO. 76 OF 2019

AND

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

BETWEEN

GILBERT JOSEPH KABUNJIA.....APPLICANT

VERSUS

LAND ADJUDICATION AND SETTLEMENT OFFICER

MERU SOUTH 1ST RESPONDENT

DIRECTOR OF LAND ADJUDICATION.....2ND RESPONDENT

CHIEF LAND REGISTRAR.....3RD RESPONDENT

THE HON. ATTORNEY GENERAL.....4TH RESPONDENT

COUNTY GOVERNMENT OF THARAKA NITHI....INTERESTED PARTY

RULING

1. This application is dated **29th July, 2019** and states that it has been brought to court by way of Chamber Summons Under Order 53 rule 1 of the Civil Procedure Rules. The application seeks orders that:-

1. This application be certified urgent and heard on priority basis.

2. That leave be granted to the applicant to apply for an order of certiorari to remove to this court the decision of the minister made

on 20th May, 2019 in Appeal No. 76 of 2019 involving Land Reference No. 2022 – Kajuki Kamutiria Adjudication Section and quash the same, the proceedings therein and any other orders made therein without jurisdiction and against the laws of the land.

3. That the leave so granted do operate as stay of further proceedings or the implementation of the said decision of the Land Adjudication and Settlement Officer.

4. The costs of this application be provided for.

2. The application is supported by the Verifying Affidavit of Gilbert Joseph Kabunjia sworn on 29th July, 2019 which states:

I, GILBERT JOSEPH KABUNJIA of P. O Box 708-60400 Chuka in the Republic of Kenya do hereby make oath and state as follows:-

1. That I am the applicant herein and therefore competent to make and swear this affidavit.

2. That I am advised by my advocates on record which advice I verily hold to be true and sound that the decision of the minister is not supported by the evidence on record. (Annexed is a copy of the proceedings and decision marked "G.J.K. "a").

3. That I am advised by my advocates on record which advice I verily hold to be true and sound that the minister erred in fact and in law by failing to consider the evidence adduced by the applicant and was therefore condemned unheard.

4. That I am advised by my advocates on record which advice I verily hold to be true and sound that the minister erred in fact by holding that one is allocated land where he or she lives or has developed and failed to appreciate that I was in constructive possession of land reference NO. 2022 as I used the same as grazing land and I have also buried the remains of my father, grandfather and great grandfathers there.

5. That the minister erred in fact by holding that I did not object to the County Government of Tharaka Nithi being awarded the suit land.

6. That I am advised by my advocates on record which advice I verily hold to be true and sound that the award was not read in open and despite looking for it at the lands offices in Chuka and in Nairobi, I did not get access to the same and only came to learn of the award way after I filed Chuka Misc. Application No 2 of 2019 yet all other decisions were being delivered in public at Kanjuki Kamutiria Adjudication Section.

7. That the minister erred in fact by holding that land reference NO. 2022 was wrongly hived off from land reference No. 1508.

8. That unless the orders sought are granted, injustice will be done to me as the process of implementation is already on going and vested interests are trying to fast track the process to defeat my interests in the family land.

9. That I pray that my application be heard.

10. That the contents of this affidavit are true to the best of my knowledge, information and belief

3. At the ex parte stage the applicant's advocate told the court that he relied on the grounds on the face of the Chamber Summons and on the applicant's verifying affidavit sworn on 29th July, 2019. He asked the court to grant prayers 1, 2 and 3 in the application.

4. Having perused the pleadings proffered in support of the application, I issue the following orders:

a. This application is certified urgent and has been heard on priority basis.

b. Prayers 2 and 3 are granted

c. Costs shall be in the cause.

Delivered in open court at Chuka this 31st day of July, 2019 in the presence of:

CA: Ndegwa

Mungai Wainaina for the Applicant

P.M. NJOROGI

JUDGE