



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAROK**

**JUDICIAL REVIEW NO. 26 OF 2018**

**REPUBLIC.....APPLICANT**

**-AND-**

**PETER CHEGE NGONYI.....SUBJECT**

**-VERSUS-**

**THE COUNTY DIRECTOR OF LAND ADJUDICATION**

**AND SETTLEMENT-NAROK.....RESPONDENT**

**-AND-**

**LASIT OLE TEEKA.....INTERESTED PARTY**

**RULING**

The Application before court is the Notice of Motion dated 12<sup>th</sup> March, 2018 and brought under Order 53 Rule (2) and (3) of the Civil Procedure Rules and under Section 10 of the Fair Administrative Action Act in which the Applicant sought leave of the court to commence Judicial Review proceedings for an order of certiorari for the purpose of quashing the Respondents proceedings and findings dated 22<sup>nd</sup> February, 2009 in objection No. 909 against parcel No. 62 of Kipise Adjudication Section **NAROK LASIT TEEKA -VERSUS- PETER CHEGE** and also an order of mandamus directing the Respondent to reinstate the applicant as the registered owner of Plot No. 62 Kipise Adjudication Section.

The Application was supported by an affidavit verifying the facts, a statement of facts and various annexures to the affidavit. It is the Applicant's contention that he was allocated Plot No. 62 Kipise Adjudication Section during the demarcation and allocation of land a fact that he alleges to have confirmed from the Narok Land Adjudication Section and he attached a copy of the Adjudication record. However, when he went to process his title to the land he was informed that he was not the owner of the said plot and that the same was allocated to the one Lasit Ole Teeka who is the Interested party herein pursuant to objection No. 909 filed by the said interested party and upheld by the Respondent.

It is the Applicants contention that the objection proceedings took place on 24<sup>th</sup> April, 2009 and that he was not served with any Notice to attend the said proceedings nor was he called to attend the same and that failure to summon him to the Objection Proceedings despite being the owner of the plot denied him the right to be heard and was in complete disregard of the Rules of Natural Justice and moreover his absence notwithstanding the Respondent had combined the hearing of three (3) objections in respect of Plots No. 56,715,936 and 909 under which were in the name of Lasit Ole Teeka, Nesiamoi Ene Teeka, Tirati Ole Teeka and Julius Kariuki Ngugi under objection No. 935, 936 and 909 and hence termed the proceedings as shambolic and were only meant to rubber stamp the removal of his name.

To the Affidavit the Applicant has annexed copies of adjudication record, handwritten copies of the proceedings of the objection hearings.

The Application was opposed by both the Respondents and the interested party. The Respondent had filed a replying affidavit that was sworn by one Njeru Julius AM who deponed that he is the land adjudication and settlement officer Narok North and East and that the Kipise Adjudication Section was established on 14<sup>th</sup> January, 1977 in accordance with Section 5 of the Land Adjudication Act Chapter 284 of the Laws of Kenya and a Land Committee was established and with demarcation work concluded adjudication records were prepared and according to the record Plot No. 62 was prepared in favour of Peter Chege Ngonyi and he annexed a copy of the said record.

The Respondent further contended when the Adjudication record was completed and published the original record comprising of the

Adjudication Records and maps were displayed for inspection by land owners so that those with objections could raise and also those who were aggrieved by the entries in the register within a period of 60 days and during the inspection stage that the interested party filed objection No. 909 against Peter Chege Nyonyi whose name was on the register and the objection heard and determined on 24<sup>th</sup> February, 2009 and determined in favour of the interested party and the Applicant being dissatisfied with the decision of the Applicant herein filed his Appeal with the Minister as provided for under section 29 (1) which was upheld and that decision became final and consequently title issued in the name of the interested party.

The Respondent contends that contrary to the allegations by the Applicant he didn't know about the proceedings he averred that the applicant knew about the objections as he filed an Appeal to the Minister in respect of 1084 against Meuponyi Ole Parsampula but he chose not to file any Appeal in 909.

The interested party filed grounds of opposition to the Application and in his grounds stated the Application does not meet the requisite conditions for the grant of orders sought as what is in dispute is about ownership of land. He stated the entry into the register of the Applicants name was fraudulently obtained and further that the Applicant has not shown whether he has been in occupation of the suit land and that the issue for consolidation raised by the Applicants were purely technical meant to disregard the substantive justice that was served.

The Application was heard and disposed off by way of written submissions and all the parties filed their respective submissions.

The Applicant submissions were raised on the grounds that the suit plot was deprived of the Applicant in disregard of the Rules of natural justice. He contended that the proceedings were shambolic as he was not accorded the right to be heard and the process of hearing an objection proceeding under the Land Adjudication Act not followed. He stated that the proceedings do not show that the Applicant subject was served and further no hearing can be said to have taken place when the Applicant was not serve or his absence not explained.

The Applicant also reiterated that the objection proceedings did not indicate who were the parties though the objection numbers were indicated.

The Respondents in their submissions contended that the suit offends the Provisions of order 53 Rule (2) of the Civil Procedure Rules as the Applicant's Motion seeks to quash an order that was made in the year 2009 and the same was filed without leave of the court.

The 1<sup>st</sup> Respondent further submits that the Application by the Applicants as not met the conditions set out under Section 7(2) of the Fair Administration Act.

I have read the Application before court and the replies in opposition to the Application and submissions filed by the parties. It is noted that is an application that is challenging the results of an Adjudication process that took place in 2009. The Applicants contends that subject to the demarcation and the adjudication process the objection proceedings were taken and heard in his absence and hence has been condemned unheard and hence necessitating the instant suit.

The Application is one that is premised on the provisions of Order 53 of the Civil Procedure Rules and in which the Applicant seeks for orders of certiorari and mandamus. It is a mandatory provision of Order 53 Rule (2) that Applications of this nature must be made not later than 6 months.

The Applicant Notice of Motion is dated 12<sup>th</sup> March, 2018 whereas the actions complained about which on the hearing of the objection proceeding took place on 22<sup>nd</sup> February, 2009 which is over 10 years and outside the statutory time allowed to file such proceedings and the applicant having not made any application I find that the Application lacks merit and I thus dismiss it with costs.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this 25<sup>th</sup> day of **July, 2019**

**Mohammed Kullow**

**Judge**

**25/7/19**

In the presence of:-

Ms Karia for the Applicant

N/A for the interested party

N/A for the respondent

CA:Chuma/Kimiriny