



**REPUBLIC OF KENYA**

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

**ELC JUDICIAL REVIEW NO. 26 OF 2017**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW FOR AN ORDER OF CERTIORARI**

**AND**

**IN THE MATTER OF THE LAW REFORM ACT, CAP 26 LAWS OF KENYA AND ORDER 53 OF THE CIVIL PROCEDURE RULES**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**LAND ADJUDICATION OFFICER**

**TIGANIA EAST.....1<sup>ST</sup> RESPONDENT**

**HON. ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**AND**

**GEOFFREY M'ITABARI.....INTERESTED PARTY**

**1. M'LINTARI M'LIMBERIA**

**2. M'ITHANA M'ITHAI.....EX-PARTE APPLICANTS**

**JUDGMENT**

1. The Applicants by Chamber Summons dated 6/7/2017 applied and were on 11/7/2017 granted leave to apply for an order of Certiorari to remove to this Court the decision of the Land Adjudication and Settlement Officer Tigania East District made on 20/4/2017 in **Objection No. 900 and 1758** involving **Land Reference No. 8442 Karama Adjudication Section** for the purpose of quashing the same and other orders made therein without jurisdiction and against the laws of the land.

2. Pursuant to the leave being granted, the Applicants filed a Notice of Motion dated 27/7/2017. The Applicants seek the order described above together with costs of the application.

3. The grounds of the application are set out in the statutory statement of facts dated 6/7/2017 and verifying affidavit sworn on 6/7/2017 which can be summarized as follow;

**a) That the applicants were at all times the registered owners of Land Reference Nos. 4642 and 5986 KARAMA ADJUDICATION SECTION.**

**b) That the interested party with unlawful and wrongful arrangement with unknown land official took away portions of the applicants' land and marked the same as 8442 KARAMA ADJUDICATION SECTION.**

**c) That the ex-parte Applicants objected to the same as provided for under Section 26 of the Land Consolidation Act and the**

objections were recorded as 900 and 1758 respectively.

**d) That the Respondent ordered a hearing which he did alone contrary to the provisions of Section 26 of the Land Consolidation Act and usurped the Land Adjudication Committee which had supervised the land gathering and had done demarcation.**

4. The 1<sup>st</sup> Interested Party opposed the application by a replying affidavit sworn on 3/12/2018. The grounds of objection may be summarized as follows:

**(a) That he is the recorded owner of parcel No. 8442 within Karama Adjudication Section measuring 3.68 acres.**

**(b) That the said parcel of land was demarcated in 2004 by the respondent.**

**(c) That the applicants filed objection No. 900 and 1758 on his parcel of land which objection was heard by a competent committee and was dismissed in his favour.**

**(d) That even before the A/R objection, the case was before another gathering committee.**

5. The 1<sup>st</sup> Respondent filed a replying affidavit sworn on 9/12/2018 by Benjo K.D who was the Sub-County Land Adjudication Officer in Tigania East County. The gist of the said affidavit is:- that the Demarcation Officer and the committee consolidated and demarcated parcel No. 8442 in its current location; that during the AR inspection, the applicants launched an objection through OBJ. 900 and 1758, which was heard and determined and that Parcel No. 8442 is valid since the objection was dismissed; and that the decision made was arrived at after careful consideration of all facts presented and in consultation with the committee.

6. On 10/12/2018 the parties appeared before the Court, and the Court directed them to file written submissions by 14/3/2019. The Applicants filed their submissions on 14/12/2018 while the Interested Party and the Respondent filed theirs on 13/2/2019 and 12/2/2019 respectively.

7. The Court has read and considered the pleadings, the submissions filed in this case. The major issue for determination is whether the 1<sup>st</sup> Respondent adopted the correct procedure in arriving at the decision being challenged.

8. According to the applicants, the decision arrived at by the land adjudicating officer is a nullity as it was made without jurisdiction under **Section 26** of the Land Consolidation Act.

9. **Section 26** of the Land Consolidation Act provides that;

*“Any person named in or affected by the Adjudication Register who considers such register to be inaccurate or incomplete in any respect, or who is aggrieved by the allocation of land as entered in the Adjudication Register, may, within sixty days of the date upon which the notice mentioned in section 25 of this Act is published at the office of the Regional Government Agent within whose district the adjudication area to which such Register relates is situated (and such date shall be endorsed upon the said notice), inform the Adjudication Officer, stating the grounds of his objection, and the Adjudication Officer shall consider the matter with the Committee and may dismiss the objection, or, if he thinks the objection to be valid, order the Committee to take such action as may be necessary to rectify the matter and for this purpose the Committee may exercise all or any of the powers conferred by section 21 of this Act...”*

10. I have perused the proceedings relating to the objection proceedings as recorded on 20/4/2017 which are annexed to the affidavit of Applicants. The proceedings do not disclose any other person as being present together with the Land Adjudication Officer. Infact at **page 287** on the heading titled “**findings**”, there is a clear indication that the adjudication officer was on his own while making decision which is the subject of the application before Court. Both the respondents and the interested party have insisted that there was a committee during the proceedings. The question on my mind is:- if indeed there was a committee, who were these members? Wouldn't it have been prudent to have their names in the proceeding and what they said or asked thereon recorded?

11. In the circumstances, I am inclined to believe the version given by the applicants that there was no committee involved during the impugned proceedings.

12. I therefore allow the motion and make the following orders:

**(a) The applicants' Notice of Motion dated 27/7/2017 is hereby allowed.**

**(b) The proceedings and the decisions made by the 1<sup>st</sup> Respondent on 20/4/2017 in respect of the suit land in Objection No. 900 and 1758 are removed and called into this Court and quashed as prayed.**

**(c) The 1<sup>st</sup> Respondent and the interested party to jointly and severally pay the Applicant costs of the application.**

**Dated and signed at Kitale this day of 2019.**

**MWANGI NJOROGE**

**JUDGE**

**ENVIRONMENT AND LAND COURT, KITALE**

**Delivered** in open court at **Meru** this **31st** day of **October 2019**.

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**

**JUDGE**

**ENVIRONMENT AND LAND COURT, MERU**