



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW APPLICATION NO. 10 OF 2018

REPUBLIC.....APPLICANT

VERSUS

DEMARCATON OFFICER ANKAMIA

ADJ. SECTION.....1ST RESPONDENT

CHAIRMAN, ANKAMIA ADJ. SECTION

LAND COMMITTEE.....2ND RESPONDENT

ATTORNEY GENERAL.....3RD RESPONDENT

AND

DANIEL KITHAMBI.....1ST INTERESTED PARTY

JOHN KIMENCU MBOROKI.....2ND INTERESTED PARTY

EX- PARTE APPLICANT

JOHN MANYANI M' MUKIRI.

JUDGMENT

1. On 24th July 2018 this Court granted leave to the *ex-parte* applicant to file his substantive motion for a prayer for Judicial Review. The Applicant filed the same on 26th July 2018 where he sought the following prayers;

a. That an Order of Mandamus be issued compelling the 1st and 2nd Respondents to strictly and fully implement the decision made by the Land Adjudication Officer on 27th November 2012, but delivered on 10th June 2014 in A/R objection Nos. 1673 and 1062, by adhering to the sketch map drawn by the area land committee in committee case No. 19/81, in implementing that decision on the ground.

b. That costs be borne by the respondents and interested parties jointly and severally.

2. The application was supported by the statement of facts and affidavit verifying the facts relied upon sworn by **Joseph Manyani M' Mukiri**. He averred that the 1st and 2nd Respondents should be compelled to fully implement on the ground the decision made in A/R Objection Nos. 1673 & 1062 so that he may recover the correct acreage of his land.

3. He averred that by consent of himself and the interested parties, the area Land Adjudication Officer ordered and directed the 1st and 2nd respondents to strictly and fully implement the aforesaid decision by adhering to the sketch map drawn by the area land committee in case No. 19/81. The applicant further states that he has been severally and infallibly been going to the office of the 1st and 2nd Respondents, pleading with them to implement the aforesaid decision but they have inexplicably not heeded. That the 1st and 2nd Respondent are obligated to implement the decision since it has never been challenged in any way from when it was delivered.

4. The interested parties entered appearance on 17th September 2018 but did not file a response to the main substantive motion. The

Respondents did not enter appearance despite being given an opportunity to do so severally.

5. On 20.3.2019, directions were given for the suit to be heard by way of written submissions, whereby, the Ex-parte Applicant and the interested party complied. The respondent did not file any submissions.

6. In their submissions the interested parties have not denied the averments made by the *ex-parte* applicant save for the fact that it is the 1st and 2nd Respondent who can implement the impugned decision and therefore, there is no reason why they were sued. They prayed that the *ex-parte* applicants be condemned to meet their costs.

7. The Ex-parte Applicant submitted that the orders sought can only be implemented by the 1st and 2nd Respondent, hence if this Honourable court does not grant the order of mandamus, the Ex-parte Applicant shall be unable to recover his already ascertained land. He relied on the cited authority of **Republic v Land Adjudication Officer Meru South/Maara Districts & 2 others Ex-parte Zachary Njeru Mugambi & 2 others [2018] eKLR**

Analysis and determination

8. The main issue for determination is whether the applicant has met the threshold to warrant the orders sought. This case is strikingly similar to the case **Republic v Land Adjudication Officer Meru South/Maara Districts & 2 others Ex-parte Zachary Njeru Mugambi & 2 others [2018] eKLR**.

9. I note that the interested party has submitted that it is the respondents who ought to implement the decision. The respondent on the other hand chose to remain mute. Five years have passed by since the determination of the A/R objections. No reasons have been proffered by the respondents for their failure to implement the decision.

10. The Interested parties were parties to the proceedings in the A/R objections and by dint of **Order 1 of the Civil Procedure Act** they are necessary parties to this suit.

11. I therefore find that this suit is merited and I grant orders as follows;

a. An Order of Mandamus be and is hereby issued compelling the 1st and 2nd Respondents to strictly and fully implement the decision made by the Land Adjudication Officer on 27th November 2012, but delivered on 10th June 2014 in A/R objection Nos. 1673 and 1062, by adhering to the sketch map drawn by the area land committee in committee case No. 19/81, in implementing that decision on the ground.

b. As costs, I have considered the indolence manifested by the respondents in this dispute. I therefore direct that respondent bears the costs of this suit to be paid to both Ex-parte Applicant and Interested Party.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 9TH DAY OF OCTOBER, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Muriithi holding brief for C.P Mbaabu for exparte applicant

HON. LUCY. N. MBUGUA

ELC JUDGE