



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAROK**

**JUDICIAL REVIEW CASE NO. 4 OF 2017**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO INSTITUTE JUDICIAL REVIEW**

**PROCEEDINGS IN THE NATURE OF MANDAMUS BY JOSEPH KATIM SAILENYI**

**AGAINST THE DISTRICT LAND REGISTRAR NAROK & THE DISTRICT SURVEYOR,**

**TRANS MARA EAST/WEST DISTRICTS**

**AND**

**IN THE MATTER OF LAND PARCEL NO. TRANS MARA/OLOLCHANI/10, 321 & 11**

**AND**

**IN THE MATTER OF SECTIONS 18 & 19 OF THE LAND REGISTRATION ACT,**

**CAP 300 LAWS OF KENYA**

**AND**

**IN THE MATTER OF SECTIONS 9 OF THE LAW REFORM ACT,**

**CAP 26, LAWS OF KENYA**

**BETWEEN**

**JOSEPH KATIM SAILENYI.....APPLICANT**

**AND**

**THE DISTRICT LAND REGISTRAR, NAROK.....1<sup>ST</sup> RESPONDENT**

**THE DISTRICT SURVEYOR TRANS MARA EAST/WEST DISTRICTS....2<sup>ND</sup> RESPONDENT**

**AND**

**JAMES KAPLONTO KONCHELLAH.....INTERESTED PARTY**

**FRANCIS SMAERI KONCHELLAH.....INTERESTED PARTY**

**RULING**

By a Notice of Motion dated 20<sup>th</sup> March, 2017 the exparte applicant had sought for an order of mandamus compelling the Respondents to determine and fix the boundaries between Land Parcel No. Trans Mara/Ololchani/10,321 and Land Parcel No. Trans Mara/Ololchani/11 as per the provisions of Section 19 of the Land Registration Act.

The Application was based on the grounds that there has been outstanding disputes over the common boundary separating the suit parcels of land and attempts by parties to have the said boundaries amicably determined and fixed have not borne any fruits and attempts to have the 1<sup>st</sup> Respondent exercise his powers to fix the boundaries has been ignored. The Application was further supported by the Applicant in which he deponed that he is the registered owner of the Land Parcel Trans Mara/Ololchani/321 and his deceased father for whom he has obtained letters of Administration to administer his estate is the owner of Land Parcel Trans Mara/Ololchani/10 and 11 and that they had a boundary dispute with the owners of Land Parcel Trans Mara/Ololchani/10 which is registered in the name of the interested party. The Applicant averred that he had requested the 1<sup>st</sup> Respondent to determine and fix the boundaries between the aforesaid parcels as required by law but he had failed to do so and thus necessitating the instant suit.

The Application was opposed by the interested party by way of replying affidavit and he averred that the Notice of Motion is an abuse of the court process and is meant to defeat the outcome of the Minister's decision vide Appeal to the Minister No. 126 of 2001. He averred that the dispute concerning the boundary was adjudicated upon and resolved vide a Minister's decision made dated 11<sup>th</sup> March, 2004.

The interested party further contends that by the Minister's decision aforesaid, Land Parcel Trans Mara/Ololchani/321 was ordered deleted and what remains is only for the implementations of the aforesaid decisions. The interested party also accused the Applicant of non-disclosure of the fact that the matter in issue here was adjudicated upon and a decision rendered.

In his submissions the Applicant states that he seeks the Respondent to carry out his statutory duty in determining and fixing of boundaries between the suit land. He states that the interested party had encroached on the suit land and it shall only be fair if the respondent carried out his duty.

The interested party in his submission stated that the instant application seeks to overturn the efficacy of the decision of the Minister dated 11<sup>th</sup> March, 2004 granted pursuant to Section 29 of the Land Adjudication Act in which the determination of the Minister is final and a court can revisit the same. It is the interested party's contention that the Minister's decision ordered the deletion of Land Parcel Trans Mara/Ololchani/321 and the litigation then before the Minister was in respect of the 3 parcels of land.

I have read the application before me and the replying affidavit and heard the opposing submissions made by the respective counsel. The issue for determination before me is whether the court should grant the prerogative order of mandamus against the Respondent to compel him to determine and fix the boundaries of the suit parcel of land.

Under section 29 of Land Registration Act the power to determine and fix boundaries is vested in the Land Registrar where parties have issues with their boundaries. In the instant case this is a matter that resulted from an adjudication section in which the applicant has availed himself the provisions of Section 27 and 28 of the Land Adjudication Act under the aforesaid sections any dispute pertaining to an adjudication section is first brought to the Land Adjudication Officer by way of an Appeal which lies with its Minister whether a party is dissatisfied with the decision of the adjudication officer.

The interested party contends that the Applicant's disputes has been heard and determined by the Minister vide Appeal to Minister No. 126 of 2001 and a decision rendered on 11<sup>th</sup> March, 2004 and that the said decision is final and no court can review the same.

I have looked at annexure FK1 which is the Minister's decision and I find that the same is related to the parcels of land the Applicant seeks the Registrar to be compelled to determine and fix its boundaries thereof.

Section 29 of the Land Adjudication Act provides that where an appeal has been made to the Minister the same shall be final. Am persuaded that the matter has been heard and determined by the Minister in pursuance of the provisions of Section 29 of the Land Adjudication Act and therefore the same does not fall within the pervert of those instances where this court can exercise its powers to grant the prerogative order of mandamus and thus I find that the application before me is incompetent and further the Applicant is guilty of non-disclosure of material fact about the existence of the aforesaid Ministerial decision.

The upshot of the above is that I find the application dated 20<sup>th</sup> March, 2017 lacks merit and I dismiss the same with costs.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this **3<sup>RD</sup>** day of **OCTOBER, 2019**

**Mohammed Kullow**

**Judge**

**3/10/19**

In the presence of: -

CA:Chuma/Kimiriny

Ms. Adala for O.M. Otieno for the interested party

Applicant:present

**Mohammed Kullow**

**Judge**

**3/10/19**