



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC PETITION NO. 9 OF 2017

IN THE MATTER OF ARTICLE 22(1) OF THE CONSTITUTION OF KENYA, 2010

AND

**IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS
PURSUANT TO ARTICLES 2,10, 19, 20, 22, 23, 40(1), (2), (3), 47(1) AND 48 OF THE CONSTITUTION**

AND

IN THE MATTER OF SECTIONS 4 AND 12 OF THE FAIR ADMINISTRATIVE ACTION ACT

AND

**IN THE MATTER OF CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS AND ENFORCEMENT OF THE CONSTITUTION) PRACTICE AND PROCEDURE RULES
2012**

BETWEEN

ZACHARY THIANE M'IBURI.....PETITIONER

VERSUS

ALBERT NGATUA THIKANYI.....1ST RESPONDENT

JOSEPH KIRIANKI THIKANYI.....2ND RESPONDENT

EUSEVIO THIAURU.....3RD RESPONDENT

ANTHONY MUNGATHIA THIKANYI.....4TH RESPONDENT

BERNARD LAIRUMBI.....5TH RESPONDENT

JOHN LUMIRI KAMAU.....6TH RESPONDENT

MIRITI KAMAU.....7TH RESPONDENT

OFFICE OF THE ATTORNEY GENERAL.....8TH RESPONDENT

THE DISTRICT LANDS ADJUDICATION AND

SETTLEMENT OFFICER TIGANIA EAST.....9TH RESPONDENT

JUDGMENT

1. On 22nd June 2017, this Petition was filed where the following prayers were sought:

- a) *An order of permanent injunction restraining the 1st to 7th respondents whether by themselves their agents, employees, servants, their successors or anyone acting in their behalf from entering the land parcel situated in Tigania East Adjudication Section*
- b) *A declaration that the petitioner's constitutional right to fair administrative action has been violated.*
- c) *An order of certiorari to quash the proceedings, findings and decision made by the 8th Respondent on 7th October 2010.*

2. The petitioner contended that his grandfather M'Limberia M'Amunyari owned land parcels measuring approximately 10.11 Acres, of which the petitioner is a beneficiary. His great grandfather M'Amunyari M'Mboori received the 1st respondent in his grandfather's parcel of land as a visitor without an abode, on the understanding that only a part of the parcel was to be used. But subsequently, the 2nd to 8th respondents invaded the land parcel courtesy of the 1st respondent. The original parcel F/NO 721 has now been subdivided into Antuamburi Adjudication Section F/Nos. 721, 58, 3151, 4270, 4271, 4272, 5458 & 5459.

3. The dispute was referred to Njuri Ncheke Council of Elders and village elders in the presence of the local government who advised the 1st respondent to hand over the property as it was not his. An objection was then filed with the Tigania East District Antuamburi Adjudication Section although it was dismissed and the petitioner finds fault in the decision.

4. The petitioner has filed a supporting affidavit where he has reiterated the averments set out in the body of the petition.

5. The petition was opposed by the 1st to 7th respondents through the affidavit of Albert Ngatua Thikanyi sworn on 4th March 2019. He deponed that the petition is full of falsehoods and concealment of material facts. He further states that the objection proceedings were duly conducted, where the petitioner lost and never appealed and or filed a judicial review challenging the decision delivered on 7th October 2010.

6. Vide the court's directions given on 26.3.2019, this matter was to be canvassed by way of written submissions. The petitioner did not comply with these directions. However, the 1st to 7th respondent did file their submissions urging the court to dismiss the petition.

7. The issues for determination are:

- a) *Whether to issue a permanent injunction restraining the 1st to 7th respondents from entering the land parcel situated in Tigania East Adjudication Section.*
- b) *Whether the petitioner's constitution right to a fair administrative action has been violated.*
- c) *Whether to issue an order of certiorari to quash the proceedings, findings and decision made by the 8th respondent on 7th October 2010.*

8. Concerning the first issue, the principles on injunction are found in the case of **Giella v Cassman Brown Co. Ltd [1973] EA 358** which held that in order to grant the injunction the court must be satisfied that: there is a *prima facie* case, demonstration of irreparable injury and if the court is in doubt to rely on the balance of convenience. The petitioner seeks the injunction on the basis that the land parcel situated in Tigania East Adjudication Section is family land. He has not provided any proof thereof and he has not given any tangible particulars of the suit land. Consequently, I am of the view that the petitioner has not met the criterion spelt in **Giella case**. He has not managed to persuade the court that his fundamental rights to property have been infringed and or violated under the Constitution.

9. On the second issue, **Article 47 of the Constitution** stipulates that:

“(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”

10. In paragraph 8 of the petition, it is averred that an objection had been filed. The same was heard but dismissed. There is no evidence of violation of any rights in the process of the determination of the objection proceedings. It is trite law that *“whoever alleges must prove”*. I am of the view that the petitioner failed to do so and therefore, it cannot be ascertained whether his constitutional right of fair administrative action have been violated.

11. The third issue is whether to issue an order of certiorari to quash the proceedings, findings and decision made by the 8th respondent on 7th October 2010. I have perused the record but I cannot see the said decision. Nevertheless, it appears that a decision was made where the petitioner lost. The said decision originated from the adjudication process which is provided for in ***The Land Adjudication Act, CAP 284***.

12. If a person is not satisfied with the decision made in objection proceedings under section 26 of the aforementioned Act, the next step is to appeal to the minister whose decision is final. This is provided for under **Section 29 of the Act**. The administration of justice is one that follows a hierarchical process where no shortcuts may be taken. In this case the petitioner was dissatisfied with the decision in the objection proceedings but he never appealed to the minister.

13. In the case of **Kanampiu M'Rimberia vs. Julius Kathane and 3 Others, Meru H.C.C. no. 6 of 2009**, I held that

“The Land Adjudication Act is a self-contained statute that has detailed procedures of how matters are to be conducted and at what point the jurisdiction of the court is to be invoked.”

14. This court has no jurisdiction to quash the decision as the petitioner ought to go to the right forum to seek redress. In conclusion, I am of the view that **the petition lacks merits and the same is dismissed with costs to the 1st -7th respondents.**

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 7TH DAY OF NOVEMBER, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Nyamu Nyaga holding brief for Ogoti for petitioner

Mwanzia holding brief for Omari for 1st to 7th respondent

1st to 4th respondents

HON. LUCY. N. MBUGUA

ELC JUDGE