



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC JR NO. 27 OF 2008

**IN THE MATTER OF AN APPLICATION OF JUDICIAL REVIEW ORDERS OF PROHIBITION AND CERTIORARI
AGAINST THE DECISION OF THE LANDS ADJUDICATION OFFICER IGEMBE DISTRICT**

AND

IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT

AND

IN THE MATTER OF OBJECTION NO. 668/97 AMWATHI/MAUA ADJUDICATION UNIT

REPUBLIC.....APPLICANT

VERSUS

THE LANDS DEMARCATION OFFICER AMWATHI/MAUA

ADJUDICATION UNIT.....1ST RESPONDENT

THE DISTRICT LANDS ADJUDICATION AND SETTLEMENT

OFFICER IGEMBE DISTRICT.....2ND RESPONDENT

M'BIRITHIA KITHONGO.....1ST INTERESTED PARTY

ISABELLA KARWIRA.....2ND INTERESTED PARTY

JULIUS BAARIU NTOITOB.....3RD INTERESTED PARTY

MUTUMA M' KIRIMA.....4TH INTERESTED PARTY

ISUMAEL MITHIKA AYUBU.....5TH INTERESTED PARTY

ALICE GACHOGA SAMWEL.....6TH INTERESTED PARTY

FRANCIS MUTHEE.....7TH INTERESTED PARTY

EUNICE KINANU MBOROKI.....8TH INTERESTED PARTY

JULIUS KINYUA.....9TH INTERESTED PARTY

M' LINGERA M'TUARUCHIU.....EX-PARTE APPLICANT

RULING

1. **M' Lingera M'Tuaruchiu** (the ex-parte applicant herein) instituted these Proceedings vide a Notice of Motion dated 7th May 2008

praying for leave to challenge the Decision made by the 2nd Respondent dated 8th November 2007 in objection case no. 668 of 97 and the leave was granted on 8.5.2008. The ex-parte applicant filed his substantive application on 29th May 2008 praying for the following Orders;

(a) That this Honourable Court be pleased to issue an Order of Certiorari to quash the decision of the land Adjudication Officer dated 8th November 2007 made in objection No. 668/97 Amwathi/Maua Adjudication Unit Igembe District.

(b) That an Order of Prohibition be issued against the 1st and 2nd Respondents prohibiting each of them or anybody else from implementing the decision dated 8th November 2007 in Objection No.668/1997 Amwathi/Maua Adjudication Unit, Igembe District.

(c) That this Honourable Court do grant costs of this application to the ex-parte applicant.

(d) That the leave so granted do operate as stay of implementation/execution of the decision dated 8th November 2007 in Objection No. 668/1997 Amwathi/Maua adjudication unit.

(e) That the costs of the application be provided for.

2. Between the years 2008 to 2017 the proceedings have been marred with calls for settlement of the issues in dispute and numerous adjournments.

3. The amended Notice of Motion application of 23.2.2018 was filed pursuant to leave granted on 2/11/2017 which introduced the 1st to 9th interested parties.

4. The 1st and 3rd Interested parties filed a preliminary Objection dated 8th October 2018 seeking this honourable Court to dismiss the notice of motion on the following grounds;

a) That the application is bad in law in that it has not complied with Order 53 Rule 7 of the Civil Procedure Rules.

b) That the prayers sought by the applicant are bad in law as no verifying affidavit has been filed as required by the law.

5. The preliminary objection was canvassed by way of written submissions where by both parties, the Ex-parte Applicant and the 1st and 3rd interested parties have duly filed their submissions.

Analysis and Determination

6. I have looked at the proceedings, the Notice of motion, the Preliminary Objection and the submissions of the parties. I discern that the Main issue for determination is whether the Notice of Motion application was filed contrary to the provisions of order 53 rule 7 of the Civil Procedure Rules.

7. The decision which the applicant herein seeks to challenge was made on 8th November 2007. The Ex-parte Applicant made the application seeking leave to file for Judicial Review on 7th May 2008. This was a day before the lapse of the six months period enshrined in **Order 53 Rule 2 of the Civil Procedure Rules**, where it is stipulated that;

“An Application for such leave as aforesaid shall be made ex-parte to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought, and by affidavits verifying the facts relied on.”

8. The application for leave was supported by the sworn affidavit of the ex-parte applicant and a statement of facts. I therefore find that to this end the application was well placed and within the provisions of the Civil Procedure Rules. The substantive motion was there after filed on 29.5.2008 which is well within the 21 one days.

9. The 1st and 3rd interested party also took issue with the fact that the decision sought to be quashed was not verified by an affidavit as enshrined in Order 53 Rule 7 of the Civil Procedure Rules. The said section provides;

“In the case of an application for an order of certiorari to remove any proceedings for the purpose of their being quashed, the applicant shall not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion he has lodged a copy thereof verified by affidavit with the registrar, or accounts for his failure to do so to the satisfaction of the court.”

10. The record shows that the applicant has attached a copy of the decision he is seeking to challenge and the same was marked as exhibit **MM1** in his affidavit. The decision has also been certified as a true copy of the Original by the Land Adjudication and settlement Officer. I find that by attaching the aforesaid copy of the decision, the applicant satisfied the threshold required under Order 53 Rule 7 of the Civil Procedure Rules.

11. The last point of contention by the 1st and 3rd interested party is that they have not been served with the relevant pleadings. The court

takes special cognizance of the fact that the interested parties have since come on record and the fact that it was a challenge to effect service on all the interested parties. It is however debatable whether or not they have been served with the pleadings here in since how then would they have known of the inconsistencies perceived through their preliminary Objection.

12. The last ambit of their preliminary objection is that the interested parties were not party to the decision. The interested parties have been referred to as persons who were given portions of the suit premises. I find them to be necessary parties to the suit since they are bound to be affected by the decision of this Court.

13. I therefore find that the Preliminary objection by the 1st and 3rd interested parties dated 8th October 2018 lacks merit and the same is therefore dismissed with costs to Exparte Applicant. I note that this suit has been marking time in court corridors since year 2008. I therefore direct that the same be heard on priority basis.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 10TH DAY OF DECEMBER, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Gikunda Anampiu holding brief for H. Gitonga for Exparte Applicant

Gikonyo holding brief for Rimita for 1st and 3rd interested parties

HON. LUCY. N. MBUGUA

ELC JUDGE