



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. MISC. APPLN. NO. 253 OF 2010

BENJAMIN M. KIMEU.....APPLICANT

VERSUS

COUNTY COUNCIL OF OLKEJUADO.....RESPONDENT

EX-PARTE

BENJAMIN M. KIMEU

JUDGMENT

1. In the Notice of Motion dated 29th November, 2010, the Ex-parte Applicant is seeking for the following orders:

a. That Judicial Review Order of certiorari do issue to move to the High Court and quash the proceedings and decision of the Respondent dated 4th November, 2010 and 10th November, 2010 which decision ordered the Applicant to stop development of Plot No. 701/Business-Noonkopir Trading Centre and constituted a sub-committee to resolve the dispute.

b. That an order of Prohibition do issue barring or prohibiting each and all the Respondents from alienating or allocating to any person and/or third party the Applicant's parcel of land known as Plot No. 701/Business-Noonkopir Trading Centre.

c. That costs of this Application be provided for.

2. The Application is grounded on the grounds that the Respondent acted fraudulently, illegally and *ultra vires* the provisions of the Local Government Act (*repealed*).

3. In his statutory statement, the Ex-parte Applicant averred that he is the registered owner, allottee and proprietor of land known as plot number 701/Business Noonkopir Trading Centre; that he purchased the said land from Alex Muli Nzeka on 24th January, 2006 and that on 26th January, 2006, the suit land was transferred by the Respondent in the Applicant's favour.

4. The Applicant has averred that he paid the requisite rates between the years 2007 to 2010 and that on 24th October, 2010, one Kenneth Mbaabu claimed that the suit land is his.

5. It is the Applicant's deposition that on 26th October, 2010, he received a letter from the Respondent which alleged that the land belonged to Robert Kanai Saidimu and directed the Applicant to stop any further construction; that he was never heard before the said letter was authored and that the Respondent

is colluding with Kenneth Mbaabu to alienate his land.

6. Although the Respondent was served with the Motion, it did not file a response.

7. The Ex-parte Applicant's advocate filed submissions in which he submitted that the Applicant having a valid and genuine title, the actions of the Respondent to stop any construction works and to alienate the suit premises is illegal and unlawful.

8. Counsel submitted that the Applicant was condemned in respect to the suit land by the Respondent unheard and that the Application should be allowed.

9. It is not in dispute that vide a letter dated 26th January, 2006, the Respondent confirmed that the suit land had been transferred to the Ex-parte Applicant. The Respondent did not give the Ex-parte Applicant an opportunity to be heard before making the final decision.

10. Having failed to give the Ex-parte Applicant an opportunity to be heard, I find that the Respondent acted illegally, unfairly and in breach of the rules of natural justice which demands that no person should be condemned unheard.

11. I therefore allow the Notice of Motion dated 29th November, 2010 as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 26TH DAY OF JANUARY, 2018.

O.A. ANGOTE

JUDGE