



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MERU**

**JUDICIAL REVIEW NO 23 OF 2014**

**SIMMON MUTUA MUNORU.....APPLICANT**

**VERSUS**

**THE LAND ADJ. OFFICER TIGANIA DISTRICT....RESPONDENT**

**CHARLES LAUTANI M'IMUNYUA.....INTERESTED PARTY**

**J U D G M E N T**

1. On 24.07.14, the Exparte Applicant obtained leave to apply for orders of certiorari to quash and prohibit the implementation of the decision of the Respondent dated 10:06:14 in objection Case No. 934 in respect of land Parcel No. 1942 Ankamia Adjudication Section.

2. The substantive motion was filed on 08:08:2014. The case for the Ex-Parte Applicant is contained in the grounds on which the relief is sought and the verifying affidavit.

**CASE FOR THE EX-PARTE APPLICANT**

3. The Ex-Parte Applicant avers that his father, Munoru M'Imunya, and the father of the Interested Party were brothers.

4. That in 1997 the Interested Party lodged objection No. 1/97 against Munoru M'Imunya before Land Consolidation Committee claiming a share of land which he had gathered at Kiauria and was awarded 3 acres. Munoru M'Imunya was dissatisfied by the decision of the committee and appealed to the Arbitration Board and his appeal was allowed, and the decision and award of the Committee was set aside.

5. The Interested Party did not lodge any objection against the decision of the arbitration board in accordance with section 17 of the Land Consolidation Act. The Ex-Parte Applicant avers that the Interested Party waited until the Register of Existing Rights was closed and Applicant's father had died on 17/04/2002, then lodged this A.R Objection No. 934 OF 2014 in respect of land parcel No. 1942.

6. The Ex-Parte Applicant contends that the objection lodged by the Interested Party which was brought after Adjudication Register was complete was not within the purview of section 26(1) of the Land Consolidation Act, and the Respondent's proceedings and decision was ultra-vires and should not be allowed to stand ought to be quashed. It is further averred that the Respondent did not sit with any committee and instead, he sat as an appeal against the decision of arbitration board while dealing with objection to Adjudication Register and awarded 2 acres of the Applicant's Land which was not subject to the arbitration board objection.

7. The Ex-Parte Applicant states that the proceedings and decision in A/R Objection case no.934 are against the provisions of the law and should be quashed.

8 In support of his case, the Ex-Parte Applicant has availed the following exhibits for the court's perusal; the proceedings of the Committee case no.1/97 (and the decision there of dated 11/3/1999), Proceedings and the decision in A/R Objection case no 934 and the consent from the Land Adjudication Officer.

**CASE FOR THE INTERESTED PARTY**

9. The case for the Interested Party is contained in his Replying Affidavit filed on 02.07.15. He states that Ex-parte Applicant is challenging the merits of the decision and not the decision making process.

10. The Interested Party does admit that the case was done by a Committee in Case No. 1/97 and then it went to the arbitration board where a Judgment was delivered. He contends that the decision in A/R objection case no. 934 was legally lodged and made.

11. In support of his case, the Interested Party has availed the arbitration Board proceedings in Case No. 1/97-98 for the court's perusal.

CASE FOR RESPONDENT

12. The Respondent did not file any response to the motion despite a promise to do so since year 2015. On 20/9/2017, Respondent opted to file Submissions instead. However such submissions were not filed.

DETERMINATION

13. The motion was canvassed by way of Written Submissions whereby both the Interested Party and Ex-parte Applicant have filed their Submissions. I have considered all the arguments raised here in arriving at a decision.

14. It is not disputed that the dispute herein was initially between the Interested Party and father of Ex-parte Applicant. The Interested Party had filed a Land Committee Case. No. 1/97 whereby both parties were not satisfied and the case was remitted to the Arbitration Board as case no. 1/97-98. A Judgment thereof was delivered. The date of this judgment is not clear but it appears to be 11/12/2001.

15. In the latest dispute, the Interested Party filed A/R/ Case 934 pursuant to provisions of Section 26(1) of the Land Consolidation Act.

16. This being a Judicial Review matter, the concern is not on the merits of the decision but the decision making process –see **Republic vs. KRA Exparte yaya Towers Ltd [2008] eKLR** cited by Interested Party where it is stated that:-

**“the remedy of Judicial Review is concerned with reviewing not the merits of the decision of which the application for Judicial Review is made but the judicial making process itself.....”**

17. It is quite apparent that the Ex-parte Applicant is dissatisfied with the merits of the decision of 10.06.14 in A/R Case 934. However, he is also unhappy with the procedure taken to arrive at that decision.

18. In so far as the dispute before me is concerned, I find that there are two issues for determination; One, whether the complaint was properly lodged in A/R Case No.934, and secondly, whether the rules of procedure were violated in A/R 934 proceedings.

Was the complaint properly lodged in A/R objection case no. 934?

19. This is a dispute which had been taken to the Committee and then to the arbitration board vide Case No. 1/97 and 1/97-98 respectively. The Interested Party is the one who had lodged a complaint before the Committee.

20. It follows that the dispute was adjudicated upon pursuant to provisions of **Section 11** of the **land Consolidation Act** where it is provided that:-

**“The Committee appointed for an adjudication section shall adjudicate upon and determine in accordance with African customary law the claim of any individual person to any right or interest in any land within the adjudication section. If a Committee is unable to reach a decision in accordance with African customary law it shall refer the matter to the Arbitration Board which shall decide the matter and shall inform the Committee of its decision”.**

21. What followed after the arbitration board decision is that the record of existing rights was then prepared in accordance with Section 15 of the Act.

22. Section 17 of the said Act provides that:

**“Any person named in or affected by Part I of the Record of Existing Rights who considers the Record to be inaccurate or incomplete in any respect may, within sixty days of the date upon which the notice mentioned in section 16 of this Act is published at the office of the Regional Government Agent within whose district the adjudication area to which the Record relates is situated (and such date shall be endorsed upon the said notice), lodge an objection with the executive officer of the Committee concerned, stating in what respect the Record is alleged to be inaccurate or incomplete”.**

23. Section 18 provides the procedure with regard to objections filed pursuant to Section 17 of the Act. There in it is provided as follows:-

**(1) The executive officer, with whom an objection is lodged in accordance with the provisions of section 17 of this Act, shall either—**

**(a) refer the objection to the Committee, if it appears to him that the inaccuracy or incompleteness alleged is a consequence of any decision of the Committee; or**

**(b) submit the objection to the Adjudication Officer, if it appears to the executive officer that the inaccuracy or incompleteness alleged is a consequence of any decision of an Arbitration Board.**

**(2) Any objection referred to a Committee under subsection (1) of this section shall be considered by the Committee and the Committee shall make a finding thereon; every such finding shall be submitted to the Adjudication Officer.**

**(3) The Adjudication Officer, to whom an objection or the finding of a Committee is submitted under subsection (1) or subsection (2) of this section (as the case may be) shall, in the case of an objection so submitted to him, consider the matter with the Arbitration Board and, after making such further inquiries as he may think fit, determine the matter; and shall, in the case of a finding so submitted to him, either—**

**(a) confirm the finding of the Committee; or**

**(b) consider the matter with the Arbitration Board and, after making such further inquiries as he may think fit, determine the matter.**

24. It is quite clear that the aforementioned provisions of section 17 and 18 provide an elaborate and intricate appellate mechanism. That is why the finality of the dispute resolution mechanism is captured under section 19 of the Act.

25. I am inclined to believe that the drafters of the law envisaged a situation whereby as much as possible the disputes regarding ascertainment of rights and interest in land would be finalized before the application of Section 20 which provides that;

**“After the expiry of sixty days from the date mentioned in section 17, or on the date upon which all alterations to the Record of Existing Rights have been made in accordance with section 19 of this Act, whichever is the later, the Record shall be deemed to be a true and complete record of all existing rights and interests in the adjudication section to which the Record relates..”.**

26. In the present case, the Interested Party has not given plausible or any explanation at all as to why he skipped this crucial procedure under Section 17 and 18 of the Act.

27. In the A/R Case No. 934 the findings there of are that the father of the Ex-parte Applicant had appealed to the Arbitration Board and he was awarded the 3:00 acres back **“AND THAT IS WHY THE OBJECTOR APPEALED IN THE A/R OBJECTION”**

28. Where in the Land Consolidation Act is such a procedure provided?. The Respondent has opted to remain silent on this issue despite being given an opportunity to state his stand.

29. My conclusion is that the A/R objection Case No. 934 was wrongly filed and the Respondent had no jurisdiction to entertain the dispute as the objector had skipped crucial steps in the dispute resolution mechanism process under the applicable law.

Whether the rules of procedure were violated in A/R 934 proceedings.

30. Ex-Parte Applicant contends that the Objection case was heard without the aid of a committee. **Section 26 of the Land Consolidation Act.** Provides that:-

**“(1) Any person named in or affected by the Adjudication Register who considers such Register to be inaccurate or incomplete in any respect, or who is aggrieved by the allocation of land as entered in the Adjudication Register, may, within sixty days of the date upon which the notice mentioned in section 25 of this Act is published at the office of the Regional Government Agent within whose district the adjudication area to which such Register relates is situated (and such date shall be endorsed upon the said notice), inform the Adjudication Officer, stating the grounds of his objection, and the Adjudication Officer shall consider the matter with the Committee...”.**

31. Again the Respondent is mute on this issue. The logical conclusion to make is that the Respondent was aware that he or she was flouting the law when he/she set out to entertain and determine the A/R objection case no. 934.

#### FINAL ORDERS

32. This is not a dispute that can be remitted back to the Respondent for determination. I also note that the leave granted on 24.07.14 was to operate as a stay of further proceedings which means that implementation of the decision in A/R 934 has not been conducted.

33. In the circumstances, I proceed to give the following orders:

**1) An order of certiorari is hereby issued to call upon and quash the whole proceedings, findings and decision of Respondents in A/R Objection No. 934 made on 10/06/2014 affecting A.R Land Parcel No. 1942 Ankamia Land Adjudication Section.**

**2) An order of prohibition is hereby issued to prohibit the implementation of Respondent’s decision and orders in A/R Objection No. 934 made on 10:06:2014 affecting A.R Land Parcel No. 1942 Ankamia Land Adjudication Section.**

**3) The decision of Arbitration Board stands, and is to be enforced in accordance with the law.**

**4) As to costs, blame appears to be on the Respondent. I therefore direct that each party is to bear their own costs of this suit.**

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 21<sup>st</sup> FEBRUARY, 2018 IN THE PRESENCE**

**OF:-**

Court Assistant: Janet/Galgalo

Mburugu for Exparte Applicant

Kiango for respondent

No appearance for interested party

**HON. L. N. MBUGUA**

**ELC JUDGE**