



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC JR NO. 28 OF 2014

WILLIAM NTONJA MUTIRIA.....PLAINTIFF

VERSUS

LAND ADJUDICATION OFFICER

GIITHU ADJUDICATION SECTION.....RESPONDENT

GEORGE KAMANJA & 83 OTHERS.....INTERESTED PARTIES

RULING

1. The preliminary objection dated 15.4.2015 and filed on 16.4.2015 has been brought forth by the 1st, 2nd, 3rd, 7th, 9th, 10th, 14th, 19th, 21st, 22nd, 23rd, 26th, 27th, 28th, 30th, 32nd, 33rd, 34th, 35th, 36th, 41st, 42nd, 44th, 45th, 51st, 61st, 70th, 71st, 72nd, 74th, 79th, 82nd, 83rd Interested parties (represented by Carl Peters Mbaabu and Co. advocates) on the following grounds;

(i) That the proceedings for an order of certiorari are irredeemably time-barred, having been commenced beyond the mandatory six-month's period, converse to Order 53 rule 2 of The Civil Procedure Rules, 2010. The decision over the suit lands was apparently made on 27.06.2013, when it was read to all the parties and this matter was filed on 02.09.2014.

(ii) That the notice of motion dated 16.09.2014 is erroneously instituted and is defective.

(iii) That the decision sought to be quashed has never been availed to the court.

(iv) That the named respondent, the Land adjudication officer is wrongly sued, as he did not participate in the impugned proceedings or make any decision therein. The beleaguered proceedings were conducted, and the decision therein made by the section's land committee, which ought to have been sued as the respondent herein.

(v) That no decision over the suit land was made on 21.08.2014 as alleged.

2. Submissions have been filed in respect of the aforementioned preliminary objection.

3. The interested parties have submitted that the decision sought to be quashed was made on 27.6.2013 while the application for leave was filed on 2.9.2014 (after a period of 15 months). Further, the interested parties have availed this decision as annexures SBI referred to in paragraph 4 (iii) in the affidavit of SILAS BAARIU. The court has been urged to dismiss the suit on the ground that the initial exparte application for leave was time barred.

4. The court has also been urged to find that William Ntonja Mutiria is indicated as the applicant yet the Republic ought to be the applicant.

5. The interested parties have also submitted that the decision sought to be quashed has not been availed to the court.

6. The interested parties have further submitted that the Land Adjudication Officer is wrongly sued as he did not conduct the proceedings, and that it is committee members who conducted the case in Land Committee case no. L.C 859/2012.

7. Finally interested parties aver that no decision was made on 21.8.2014 as alleged in the application for leave dated 2.9.2014 and in the substantive motion dated 16.9.2014

8. In support of their case, the interested parties have proffered the following authorities;

- Farmers Bus Services & others versus the Transport Licencing Appeal Tribunal (1959) East Africa page 779; Mahomed Ahmed versus Republic (1957) E.A 523
- Welamandi versus The chairman Electoral Commission of Kenya 2002 IKLR 486
- Ndete versus Chairman Land Disputes Tribunal & Another (2002) IKLR 392.

9. The 37th and 4th interested parties who are represented by J.G Gitonga advocates are in support of the preliminary objection.

10. The Ex-parte Applicant's submissions are that the date of the decision was altered to read 27.6.2013 instead of 21.8.2014. He avers that the documents he has availed clearly show that the decision was made on 21.8.2014.

11. Applicant further avers that he was the applicant in the application for leave but in the substantive motion, the Republic is indicated as the applicant.

12. The applicant further submits that the averment that the decision was not annexed is not a pure point of law.

13. Finally, the applicant submits that the land adjudication officer is properly enjoined in the matter as the land committee work under his supervision.

Determination

14. Ground 1, 3 and 5 are related and I will deal with them together. I have perused the record. I have not come across a decision bearing the date of 21.8.2014. Ex parte Applicant avers that the decision was altered to reflect 27.6.2013 instead of 21.8.2014. In applicants annexure WN5, he is addressing the district land adjudication officer as follows; "**According to the case that was ruled by the committee refusing to adopt the Njuri Ncheke judgment of which they had applied for, I ask for a consent to object these judgment before 14 days lapses.....**". This letter bears the date of 25.7.2014. It follows that the ruling applicant was referring to was certainly not made after this letter. There is nothing which even remotely suggests that there was a decision made on 21.8.2014.

15. On the other hand, the proceedings availed by the interested parties as annexure SBI clearly indicates the particulars of the land committee case, the same being No. LC 867/12 filed on 22.11.2012 with the hearing commencing on 7.2.2013 and a decision was made on 27.6.2013. The proceedings also indicate that ex parte applicant testified and was cross examined at length.

16. How comes the ex-parte applicant didn't make a request to file further particulars to counter the averments raised by the interested parties and particularly with regard to the proceedings of the land committee.

17. I am inclined to believe that ex parte applicant is not candid regarding the decision he desires to be quashed. His claims are tainted with false hoods in view of the discrepancies in annexures WN4, WN5 and WN6. His claim that the committee decision was altered to read 27.6.2013 and not 21.8.2014 is unfounded. I find that the proceedings here in were filed contrary to order 53 rule 2 of the Civil Procedure Rules and section 8 and 9 of the law reform Act cap 26 laws of Kenya. The preliminary objection succeeds on ground 1, 3 and 5.

18. As for ground 2, I find that the notice of motion filed on 23.9.2014 clearly indicates Republic as the Applicant. Ground 2 raised in the preliminary objection is hence not merited.

19. As for ground 4, I am in agreement with the Ex-parte Applicant's submissions that the land committee works under the supervision of the Land adjudication officer. Indeed the land committees do not carry out their activities independent of the land adjudication officer. This ground too is unmerited.

20. In conclusion, I find that the preliminary object succeeds on the grounds that there is no decision of 21.8.2014 capable of being quashed. The upshot of this is that this suit is hereby dismissed with costs to the interested parties.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 25th APRIL, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Ayub A for ex parte applicant absent

K. Gitonga for interested party present

Nyenyire holding brief for J.G Gitonga for 37 & 41 Interested Party present

HON. LUCY. N. MBUGUA

ELC JUDGE