



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JR NO 37 OF 2016

TOM MURINGA TUARUCHIU.....APPLICANT

VERSUS

THE COUNTY LAND ADJUDICATION AND

SETTLEMENT OFFICER TIGANIA SUB COUNTY..... RESPONDENT

PENINA WANJIRU BENJAMIN.....INTERESTED PARTY

JUDGMENT

1. By a notice of motion dated 9.1.2017, the ex-parte applicant, Tom Muringa Tuaruchiu seeks the following orders;
 - (i) That an order of CERTIORARI be issued to call for and quash the proceedings and award decided on 12/11/2016 by the County Land Adjudication and Settlement officer Tigania sub County in objection no. 335.
 - (ii) That an order of MANDAMUS be issued ordering and compelling the County Land Adjudication and settlement officer Tigania Sub County to cancel any implementation of the award in objection no. 335 in respect of land parcel no.5098 in Karama Adjudication Section which land was not subject to objection no. 335.
 - (iii) That costs for and incidental to this application be borne by the respondent and interested party.
2. The case of the exparte applicant is that he (ex-parte applicant) is the registered owner of parcels no. 2566 and 5098 Karama adjudication section within Tigania East Sub County.
3. Exparte applicant avers that the interested party had filed objection case no. 335 in respect of land parcel no. 2566. A decision was given on 12.11.2016 whereby the interested party was awarded a portion of 0.43 acres from land parcel no. 5098 belonging to exparte-applicant.
4. Exparte applicant contends that the decision to hive off, a portion of his land no. 5098 yet the proceedings were in respect of parcel no. 2566 amounted to gross abuse of office and powers conferred upon the respondent, that the decision itself is illegal and that he stands to suffer if the award is not quashed.
5. In her replying affidavit filed on 27/09/2017, the interested party Penina Wanjiku Benjamin, avers that she is the one who filed the A/R objection case No. 335 for plot no. 2566 against the exparte applicant whereby she was awarded 0.43 points.
6. The respondent did not file any response to the Judicial Review Motion despite the fact that Mr. Kiongo (counsel for the Respondents) had made a commitment to do so on 19.10.2017.
7. The motion was argued by way of written submissions which were duly filed by all the parties.
8. In his submissions, Exparte applicant avers that he was aggrieved by the decision of the respondent and he therefore challenged the decision of the respondent to the minister. He however desires that the decision of the respondent be quashed because the implementation of the award was on a parcel of land which was not subject to the objection.
9. Exparte applicant submits that the respondent should not be allowed to implement his award on any property which is not the subject matter of the objection as doing so is a recipe for chaos and anarchy.
10. In support of his case, exparte applicant has cited the case of **Republic & 2 others versus Exparte Lydia Manyatta M'Aruryaru (2015)**

eKLR.

11. For the Interested Party it is submitted that all proper procedures were followed in the hearing of the objection case. Further, the IP avers that ex parte applicant has not exhausted all the remedies under the law of adjudication.

12. The respondent submits that the notice of motion dated 9.1.2017 lacks merits and that the same is an abuse of the court's process. The respondent has relied on the case of **Republic versus Nairobi City County & Hannah Waituira Gatundu Ex parte Boniface Wachira Gichimu (2016)** and the case of **Republic versus city council of Nairobi, Ex parte Rafiji Velji Shah (2014) eKLR.**

13. I have weighed all the issues raised herein and the submissions of the parties. From the onset, I must state that I have not been able to discern the full record of the proceedings in objection case no. 335 primarily because, what has been availed to this court is not clearly legible. The photocopying was partially and poorly done. I am however able to discern that the proceedings were conducted under cap 283 laws of Kenya (Land Consolidation Act).

14 The final decision in objection proceedings case no. 335 is however legible and is recorded as follows:

“DECISION

Objection allowed. Forty three (43) points to be hived from the respondents plot; the area pinpointed by the objector neighboring the main road in Karama market Patrick and the respondent and be registered to the objector PENINA WANJIKU BENJAMIN ID. No.13836917. Refer to the sketch.”

15. This decision does not indicate from which parcel of land the excision of the 43 points is to be undertaken. There is no mention of parcel no. 5098 or 2566.

16. The sketch drawn by the respondent is very vague and is drawn in a casual manner. One can hardly discern what is on the ground. Is it that these parcels have no numbers, such that respondent is only able to identify them as Patrick, Timothy and Respondent!

17. Having not been able to read the proceedings, this court would not know the circumstances under which the decision was arrived at. But on the face of it, the decision including the sketch map is devoid of clarity on which parcels of land are affected by the excision of 43 points. Such a decision is clearly bound to elicit a lot of heat when it comes to the implementation. I am in agreement with the averments of the Ex parte Applicant that the implementation of the Respondents decision is a recipe for chaos and anarchy.

18. My conclusion is that the decision is tainted with material procedural flaws, is unreasonable, irrational, disproportional, unfair and is in violation of the principle of legitimate expectation.

19. In the circumstances I proceed to give the following orders:

(i) An order of CERTIORARI is hereby issued to call for and quash the proceedings and award decided on 12/11/2016 by the County Land Adjudication and Settlement officer Tigania sub County in objection case no. 335.

(ii) An order of MANDAMUS is hereby issued ordering and compelling the County Land Adjudication and settlement officer Tigania Sub County to cancel any implementation of the award in objection no. 335 on land parcel no.5098 Karama Adjudication Section.

(iii) The case is remitted back to the respondent to give a decision that has no material procedural flaws. In particular, the decision, including the sketch plan should contain a clear implementation plan.

(iv) As blame appears to be on the part of the respondent, then each party is to bear their own costs of the suit.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 18th APRIL, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Gichunge for ex parte applicant

Interested party present in person

Kiongo for respondent

HON. LUCY. N. MBUGUA

ELC JUDGE