



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC JR 23 OF 2016

JAPHETH MICUBU NTOBURI.....1ST APPLICANT

(Suing is legal representative of Ntoburi Ithibutu)

HENRY KOBIA KUBAI2ND APPLICANT

(Suing as legal representative of Ithibutu Thanaiba)

VERSUS

THE LANDS ADJUDICATION AND SETTLEMENT

OFFICER IGEMBE1ST DEFENDANT

LAND REGISTRAR, MAUA2ND DEFENDANT

THE ATTORNEY GENERAL3RD RESPONDENT

KUBAI BAIMUKU1ST INTERESTED PARTY

REGINA KANANU 2ND INTERESTED PARTY

MUROKI IMUNGIRI 3RD INTERESTED PARTY

MUROKI LAIBUNI GICHUNGE 4TH INTERESTED PARTY

JOSEPH MUNGATHIA M'MWAMBIA5TH INTERESTED PARTY

INYINGI MUREMERA..... 6TH INTERESTED PARTY

JUDGMENT

1. On 18.8.2016, the exparte applicant was granted leave to bring forth Judicial Review proceedings seeking orders of mandamus to compel the Respondents to correct the acreage of L.R.NO. ITHIMA/ANTUMBURI/2406,2424,5157.
2. The substantive motion was filed on 30.8.2016. The grounds in support of thereof are that;
 - (a) The acreage indicated on the title deeds differs with the acreage on the adjudication register.

(b) That L.R No. ITHIMA/ANTUAMBUI/5157 is land locked and needs to have a road of access.

(c) The parcels of land for the ex-parte applicants were eaten up by the interested parties.

3. The ex-parte applicants are two, namely Japhet Micubu Ntoburi and Henry Kobia Kubai. The latter is the one who has sworn an affidavit on behalf of himself and on behalf of his co-exparte applicant. The gist of their case is that the land parcels no. Ithima/Antuambui/2406, 2424 and 5157 were registered in the deceased names and title deeds were issued. They claim that the acreage of the suit parcels reflected in the titles do not correspond to what is in the adjudication record.

4. The ex-parte applicants aver that the interested parties have more land on their title deed than what is in the adjudication register. To buttress this point, they have availed certificates of official search (under the Land Registration Act) for parcel no. 2424 as H.K.4, for parcel no. 2406 as H.K.5 and for parcel No. 5157 as H.K. 6. The corresponding adjudication records are annexures H.K 9 for parcel 2406 and H.K. 10 for parcels 5157. The adjudication record for parcel number 2424 is not annexed to the supporting affidavit of Henry Kobia Kubai.

5. Further, the ex-parte applicants aver that the land parcel No. 5157 has no access road. It is land locked. They have availed annexure H.K.7, a sketch map to confirm this state of affairs.

6. The case for the 3rd, 5th and 6th interested parties (herein after referred to as the interested parties) is contained in their Replying affidavits. They claim that the 4th interested party is deceased. The 3rd interested party owns parcel no. Ithima/Antuambui/810, 5th interested party owns Ithima/Antuambui/5165 while 6th interested party owns Ithima/Antuambui/2455.

7. The interested parties aver that they have occupied their respective parcels of land since 1992. That prior to transmission of the adjudication register to the relevant government for issuance of title deeds the parties had an opportunity to raise objections.

8. The interested parties claim that the land parcels of the exparte applicants was one big parcel belonging to their late grandfather one M'Ithibutu Thanaiba, which land they sub-divided and got their respective shares and it is then that they were supposed to provide access road to their parcel no. Ithima/Antuambui/5157. The interested parties have availed annexure IM2 which is a copy of a sketch map showing that the exparte applicants' parcel number 2406, 2424 and 5157 was one unit before sub-division of the same among themselves.

9. The interested parties also aver that Kubai M'Arimba Baimuka is the father of the 2nd ex-parte applicant and that he is alive and energetic and hence he ought to pursue his own claim.

10. The interested parties further state that their parcels are clear and no land was added to their parcels during formal registration of the same. They also state that the ex-parte applicants' records are not clear, need expert interpretation.

11. The 1st and 2nd Interested parties have not filed any response to the claim of the ex-parte applicants.

12. The respondent filed grounds of opposition stating that the suit is fatally defective, misconceived, incompetent, an abuse of court process and that the same is unmerited. Respondent also states that Judicial Review does not concern itself with the merits of a decision but with the decision making process and hence the orders sought are untenable as against the respondent.

Determination

13. I have considered all the issues raised herein including the submissions of the parties. I have seen a sketch map availed by the ex-parte applicants showing that land parcel no. 5157 is land locked. This sketch plan is similar to the one availed by the interested parties. No one has explained as to how that

came to be or where the sketch emanates from. The Judicial Review proceedings is therefore not the proper forum to determine how this sketch map ought to be rectified.

14. The ex-parte applicants have claimed that their acreages in the titles were reduced contrary to what was in the adjudication register. This is however an issue that requires proof. Whereas the search certificates of the parcels No. 2424, 2406 and 5157 clearly indicate the acreage of the parcels as 0.20 ha, 0.18 ha and 0.22 ha (see annexure H.K 4, 5 and 6 respectively), the alleged adjudication records do not contain such clear particulars.

15. The adjudication records availed by the ex-parte applicants as annexures to their application run from HK8 to HK10. For parcel NO. 2406, the relevant annexure is HK9. It contains a record of 0.95 (for Kubai Baimuku). One cannot tell whether this is the acreage or not. For parcel NO. 5157, the records are in annexure HK10 for Ntoburi Ithibutu and do not contain anything that can remotely be construed as acreage. The adjudication records for parcel no. 2424 for Ithibutu Thanaiba are not in any of the annexures in the supporting affidavit of Henry Kobia Kubai (2nd Ex-parte Applicant). However, I have found such a document in the chamber summons of 11.8.2016. this document has figures reflected as follows:

2.00

0.60

1.40

0.60

0.80

Then there is a figure of 0.60 ac. The court is not able to discern what is the meaning of these figures.

16. If the court was to order that there be rectification of the records, then which records would be relied on. The bottom line is that from the materials availed by the exparte applicants, it is not possible to make a finding that their acreages were reduced when it came to the issuance of titles.

17. Another issue the court has picked is with regard to litigation during the adjudication proceedings. It appears that cases had been filed in respect of these parcels. For instance parcel no. 2424 had an objection no. 1587, while parcel no. 5157 had an objection NO. 1050. The applicants ought to have availed the proceedings and findings in those proceedings as this could have perhaps assisted the court to have a clue as to what their claim was during the adjudication process.

18. The documents of the exparte applicant are also in shambles. In paragraph 7 of the affidavit of Henry Kobia, he has made reference to annexures HK 14 to 20 but the actual annexures run up to HK 10 only. He also refers to the sketch plan as annexure H.K 11. There is no such marking. Instead the sketch map is annexure H.K.7.

19. Another issue the court has picked is with regard to the claim in respect of parcel no. 2406. Hk9, an annexure to the supporting affidavit of the 2nd ex-parte applicant shows that one Kubai Baimuku is the owner of this land. The Interested parties claim that this person is alive and energetic and that he is the father of Henry Kubai (2nd ex-parte applicant). Why are the ex-parte applicants mentioning this land as part of the parcels affected by the reduction of acreages, then thy go ahead to identify KUBAI BAIMUKU as the 1st Interested party. Even in their submissions, the ex-parte applicants have not endeavored to explain this confusion.

20. As rightly submitted by the interested parties, the exparte applicants had a duty to put forth their claim in a clear and concise manner showing what their claim against the interested parties is rather than living

the interested parties to guess how they stood to be affected by the proposed correction of the registers.

21. I am in agreement with the interested parties that the facts herein are disputed. It is not clear as to when and as to what point the alleged reduction of acreages was made (if indeed there was such a reduction).

22. I am of the view that evidence need to be adduced in a trial to deal with the issue of the land locked land. For instance who drew the sketch map?. Is this the map upon which the titles have been issued?. Much as I sympathize with the issue of the land locked parcel, this suit is not the proper forum to resolve the impasse.

23. It is also not lost to this court that even the law applied during the adjudication process is not clear. The Exparte applicants are silent on the law applicable. The interested parties aver that it is the Land Consolidation Act, cap 283 laws of Kenya, while respondents claim that the applicable law is the Land Adjudication act cap 284.

24. The exparte applicants also have to deal with the issue of the 4th interested party who is apparently dead.

25. All in all, I find that the orders sought herein are not merited. The Judicial Review motion is hereby dismissed with costs to 3, 5th and 6th interested parties and the Respondent.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 16th MAY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Ngeno holding brief for Kimathi L. for respondent present

Attorney General for respondent absent

Mwiti holding brief for Mutembei for 3rd, 5th and 6th interested parties

HON. LUCY. N. MBUGUA

ELC JUDGE