



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

MISC. APPLICATION (JR) NO.3 OF 2007

IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW ORDERS IN THE NATURE OF CERTIORARI, MANDAMUS AND PROHIBITION OVER THE DECISION OF THE LAND ADJUDICATION OFFICER ATHINGA ATHANJA ADJUDICATION SECTION DATED 13.11.2007.

AND

IN THE MATTER OF LAND PARCEL NO. 1819 ATHINGA ATHANJA ADJUDICATION SECTION NO 469

AND

IN THE MATTER OF LAND CONSOLIDATION ACT CAP 283 & LAND ADJUDICATION ACT CAP 284

BETWEEN

REPUBLIC.....APPLICANT

VS

THE LAND ADJUDICATION OFFICER

ATHINGA ATHANJA ADJUDICATION SECTIONS.....RESPONDENT

JUSTSUS MUGAA M'IMPWI.....INTERESTED PARTY

EXPARTE APPLICANT.....M'MAILANYI M'ILONGI

JUDGMENT

1. On 22.1.2008, the Exparte Applicant was granted leave to file Judicial Review proceedings seeking orders of certiorari to quash the decision of the Land Adjudication Officer dated the 13.11.2007; mandamus to compel the said Land adjudication officer to alter the adjudication register of Athinga Athanja adjudication section and return 2 acres deducted from the exparte Applicants land parcel No 1819; prohibition to prohibit the Land adjudication officer Athinga Athanja Adjudication section from interfering with the exparte Applicants land aforesaid. The said leave to operate as a stay of the implementation of the decision.

2. The substantive motion was filed on 12.2.2008. The grounds in support of thereof are that; The 2 acres was given to the Interested Party without any legal or factual basis; the Respondent exercised his discretion unreasonably; the Exparte Applicant was not accorded a fair hearing as his testimony and that of his witnesses was disregarded in favour of the Interested Party;

3. The application is supported by the grounds stated in the statement of facts and the verifying affidavit of the Exparte Applicant M'Mailanya M'Ilongi both dated the 12.2.2008. The Exparte Applicant deponed and reiterated the contents of the application. In brief it is his case that the Respondent did not allow the Applicant a fair hearing. That he is the owner of L.R NO 1819 situate in Athinga Athanja Adjudication section. The Applicant avers that he bought the land from third parties and had 4 acres moved to the current situation of the suit land. That the Respondent did not consider his evidence tendered in the proceedings and instead arrived at the incorrect decision.

4. The Interested Party opposed the application through a replying affidavit filed on 10.4.08 in which he deponed that he filed an objection over parcel No 1819 claiming 2 acres from the Applicant. That the land was ancestral land which the Applicant illegally demarcated for himself. That the Applicant was a committee member at demarcation and took advantage of his position to deprive them of the land. The both parties each called two witnesses at the proceedings. That the award of the Land Adjudication officer was based on the evidence adduced at the hearing.

5. Parties elected to file written submissions which I have carefully considered. The Respondent filed none.

The issues for determination.

6. I have considered the issues raised in the rival affidavits, the statements of facts, the grounds of the application, the written submissions of the parties and the issues for determination are;

A. Whether the decision of the Respondent was arrived at without any basis;

B. Whether the Exparte Applicant was accorded the right to fair hearing;

7. I agree with the exparte Applicant's submissions that the powers of the Respondent to determine all claims under the Act relating to interests in land in the adjudicating area lies in section 9, 10, 11, 12 read together with section 26 of the Act. In specific section 26 states as follows;

“(1) Any person named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer in writing, saying in what respect he considers the adjudication register to be incorrect or incomplete.

(2)The adjudication officer shall consider any objection made to him under subsection (1) of this section, and after such further consultation and inquiries as he thinks fit he shall determine the objection.

8. It is clear that the Respondent was vested with the jurisdiction to hear the claim/dispute in this case.

9. In addressing the issues for determination, I want to associate myself with the decision of the Court of Appeal in the case of **Municipal Council of Mombasa Vs Republic & Anor 2002 EKLK**, where the learned Justices had this to say about judicial review;

“judicial review is concerned with the decision -making process, not with the merits of the decision itself. The Court would only be concerned with the process leading to the making of the decision. How was the decision arrived at? Did those who made the decision have the power, i.e. the jurisdiction to make it? Were the persons affected by the decision heard before it was made? In making the decision, did the decision - maker take into account relevant matters or did he take into account irrelevant matters? These are the kind of questions a Court hearing a matter by way of judicial review is concerned with, and such Court is not entitled to act as a Court of appeal over the decider; acting as an appeal Court over the decider would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision – and that, as we have said, is not the province of judicial review”.

10. Whether the decision of the Respondent was arrived at without any basis? Without going into the merits of the decision it is clear that the decision arrived at by the Respondent is in tandem with the evidence adduced by the parties in the proceedings. The Court is unable to make a finding that the Respondent arrived at the decision on his own nor that he did not take into account matters that were relevant to the proceedings.

11. The Court has examined the record of proceedings culminating into the decision/award by the Respondent on the 13.11.07 and note that the Exparte Applicant participated fully in the proceedings including cross examining the Interested Party and his witnesses and presenting two of his own witnesses. There is no evidence to lead to Court to conclude that the Exparte Applicant was not granted a hearing in the proceedings.

12. It is clear that the exparte Applicants seeks to indirectly challenge the decision arrived at by the Respondent. Going by the decision of the Court of Appeal in **Municipal Council of Mombasa** supra, it is not in the province of this Court to delve into the merits of the decision.

13. The application has no merits and is dismissed with costs to the Interested Party and the Respondent.

Orders accordingly

DATED, DELIVERED AND SIGNED AT MERU THIS 28TH DAY OF JUNE 2018

J.G. KEMEI

JUDGE

In the presence of:

C/A Mutua

N/A for exparte Applicant

Kiongo for Respondent

Mr. Murithi holding brief for Ms. Kiome for interested party