



**REPUBLIC OF KENYA**

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

**MISC. APPLICATION (JR) NO.75 OF 2010**

**IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW ORDERS OF PROHIBITION, CERTIORARI AND MANDAMUS**

**AND**

**IN THE MATTER OF SECTIONS 8 & 9 OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA AND ORDER 53 RULE 3(1) OF THE CIVIL PROCEDURE RULES**

**AND**

**IN THE MATTER OF NLAND CONSOLIDATION ACT CAP 284**

**AND**

**IN THE MATTER OF LAND REGISTRATION OF LAND PARCELS NUMBERS  
376,348.395,396,360,354,353,344,380,394,382,399 AND 397 OLD KIARE ADJUDICATION SECTION**

**REPUBLIC.....APPLICANT**

**VS**

**THE DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER,**

**TIGANIA DISTRICT.....1<sup>ST</sup> RESPONDENT**

**THE DIRECTOR OF SURVEYS.....2<sup>ND</sup> RESPONDENT**

**THE CHIEF LAND REGSITRAR.....3<sup>RD</sup> RESPONDENT**

**GEOFFREY GATUA.....1<sup>ST</sup> EXPARTE APPLICANT**

**JOSEPH KAIGERA RUKUNGA.....2<sup>ND</sup> EXPARTE APPLICANT**

**JAMES KARAU ITURIU.....3<sup>RD</sup> EXPARTE APPLICANT**

**DAVID M'MBOROTHI IGWETA.....4<sup>TH</sup> EXPARTE APPLICANT**

**RUMANO M'MUGAINE.....5<sup>TH</sup> EXPARTE APPLICANT**

**M'IKINYUA KALIBI.....6<sup>TH</sup> EXPARTE APPLICANT**

**KAILANYI MAITAI.....7<sup>TH</sup> EXPARTE APPLICANT**

**CIOMINYORI M'ERURA.....8<sup>TH</sup> EXPARTE APPLICANT**

**M'MIRITHU M'ITELEKUA.....9<sup>TH</sup> EXPARTE APPLICANT**

WILLIAM NKURU.....10<sup>TH</sup> EXPARTE APPLICANT

M'LIMBERE M'NGUTHARI.....11<sup>TH</sup> EXPARTE APPLICANT

M'MUKUCHIA M'MITHI.....12<sup>TH</sup> EXPARTE APPLICANT

M'IMULI M'ILIMBERIA.....13<sup>TH</sup> EXPARTE APPLICANT

### JUDGMENT

1. On 22.10.2010, the Exparte Applicants were granted leave to file Judicial Review proceedings seeking orders of prohibition to prohibit the 1<sup>st</sup> Respondent from re-demarcating or in any way whatsoever interfering with Land Parcel No.s 376,348,395,396,360,354,353,344,380,394,382,399 and 397 Old Kiare adjudication section; mandamus compelling the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to register the Applicants as owners of Land Parcel No.s No.s 376,348,395,396,360,354,353,344,380,394,382,399 and 397 Old Kiare adjudication section; the said leave so granted to act as a stay of any demarcation and adjudication.

2. The substantive motion was filed on 11.11.2010. The grounds in support of thereof are that; the old Kiare adjudication section comprises of 400 pieces of land and the suit lands are within Old Kiare Adjudication section; the suit lands have been demarcated in accordance with the Land Adjudication Act within the said section; the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents did issue title deeds to other owners of lands within the said old Kiare adjudication area leaving them out.

3. The Motion is supported by the affidavit of the 1<sup>st</sup> Exparte Applicant where he deposes that the Exparte Applicants are residents of Tigania District. That the Government of Kenya through the Ministry of Lands established the Old Kiare settlement scheme and allotted land to individuals through balloting in 1970 which saw the scheme portioned into 400 plots. Through the process the Exparte Applicants balloted and were allotted land and settled thereon.

4. On the 10.5.1995 the area was declared an adjudication area under the Land Adjudication Act through a Notice Ref DMM/LA/10/VOL1/28 setting out the delineations and specific boundaries of the adjudication section. That the plots of the Exparte Applicants comprised the adjudication area within the set boundaries. The Exparte Applicants being people affected by the ongoing adjudication participated fully in the process in accordance with the Act; the register was published. The Exparte Applicants inspected it and all the 402 objections were determined successfully and the names were forwarded to the Registrar of Titles for issuance of titles. That notwithstanding the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents refused to issue titles to the Exparte Applicants. That they have learnt that the 1<sup>st</sup> Respondent intends to subject the Exparte Applicants to another process of fresh adjudication which they term it illegal, arbitrary, unprocedural and contravenes their right to property as enshrined in the Constitution. Needless to state that a fresh adjudication amounts to discrimination and will put them in irreparable damage.

5. In reply, the 1<sup>st</sup> Respondent through Amos Muli Musyoka, the District Land and adjudication & Settlement officer Tigania District confirmed that the suit lands are not within the Old Kiare adjudication section but are in the new Kiare adjudication section. That during demarcation the Exparte Applicants plots being part of 62 plots were demarcated outside the old Kiare perimeter section. The old Kiare section plots have been registered and titles issued to the owners. He confirmed that the 62 plots were cancelled and ceased to exist in the register of Old Kiare adjudication register and the affected owners including the Exparte Applicants were advised to await the declaration of the new Kiare adjudication section so that their rights can be ascertained and recorded afresh.

6. Parties elected to file written submissions which I have carefully considered. The Respondents filed none.

#### **The issues for determination.**

7. I have considered the issues raised in the rival affidavits, the statements of facts, the grounds of the application, the written submissions of the Exparte Applicants and it is clear that the Exparte Applicants seek to prohibit the Respondents from demarcating the suit lands afresh and compel them to issue titles forthwith. The issues for determination are;

A. Whether the Applicants are entitled to the orders sought

B. Who meets the costs of the application?

8. Section 5 of the Land adjudication Act set out the manner in which an adjudication section is established. It states as thus;

“The adjudication officer shall by notice either—

(a) establish adjudication sections within the adjudication area;

(b) establish the whole adjudication area as an adjudication section.

(2) A separate notice shall be published in respect of each adjudication section, and in each such notice the adjudication officer—

(a) shall define as clearly as possible the area of the adjudication section;

(b) shall declare that interests in land within the adjudication section will be ascertained and recorded in accordance with this Act;

(c) shall fix a period within which a person claiming an interest in land within the adjudication section must make his claim to the recording officer, either in writing or in person or by his agent duly authorized according to law (including recognized customary law); and

(d) may require any person making a claim to point out to the demarcation officer or to demarcate or assist in the demarcation of the boundaries of the land in which he claims to be interested or to clear any such boundaries or any other line in the manner and before a date fixed by the demarcation officer

9. It is on record that the procedure set out above was followed in the instant case upto the finalization of the Register. The question is at what point did the Respondents notify the exparte Applicants that their plots were demarcated outside the Old Kiare adjudication scheme. I have perused the record and despite the 1<sup>st</sup> Respondent deposing in his affidavit that the exparte Applicants were notified, there is no evidence on record of any notification. It would appear that he is referring to the adjudication notice establishing the old Kiare adjudication area dated the 10.5.1995. According to the evidence of the exparte Applicants, which evidence has not been controverted by the Respondents, the adjudication process proceeded upto the issuance of titles. The completion of the adjudication register issued by the adjudication officer dated the 23.1.1998 supports this. It would appear that the first time that indicates trouble is on 25.11.2004 when the adjudication officer writes to the Director of Survey that the 62 parcels had been erased from the PIDs because they were erroneously demarcated outside the described old Kiare adjudication section. The plots belonging to the exparte Applicants are included in the list of 62 aforesaid.

10. I have considered the explanation tendered by the Respondents' representative that although the process was completed, it was discovered that the suit lands were noted to be outside the Old Kiare Adjudication Scheme and therefore could not be registered under the said scheme. The role of the adjudication is the ascertainment and recording of rights and interests in land. The Land Consolidated Act and the Land Adjudication Act provide detailed mechanisms to be followed by the Land adjudication Officer. The Respondents therefore are within their mandate to carry out adjudication as per law provided.

11. I do not find anything suspicious in the explanation tendered by the Respondents. Other than saying that they will suffer irreparable damage, the Exparte Applicants have not shown reasons prejudicial or otherwise that would militate against their parcels being adjudicated under the new Kiare Scheme. The role of the Court is to determine rights in land once the adjudication is complete. I fail to see any illegality or irrationality to the actions of the 1<sup>st</sup> Respondent other than to say that they ought to have explained the issue at the earliest to the exparte Applicants.

12. The Exparte Applicants have sought an order for Prohibition to prevent the 1<sup>st</sup> Respondent from demarcating the parcels of land in the Old Kiare Scheme. Where a decision has been made, whether in excess or lack of jurisdiction or whether in violation of the rules of natural justice, an order of prohibition would not be efficacious against the decision so made. Prohibition cannot quash a decision which has already been made; it can only prevent the making of a contemplated decision. I will find difficulty in granting this order as the adjudication of the old Kiare is complete.

13. The same applies to the order of Mandamus. The 1<sup>st</sup> Respondent has not refused to adjudicate the parcels of land only stating that it will be done in the new Kiare Scheme. It is my view that the two orders are not consistent. One is to prohibit the adjudication and another is to compel the parcels of the land to be registered under the old Kiare Scheme. Even if that were to happen, some form of adjudication would have to be done. It has been explained that the survey was cancelled due to the error that the 1<sup>st</sup> Respondent has owned upto. It would amount in my view to halting the adjudication of the lands which is not in the interest and benefit of the exparte Applicants.

14. Having said that I take cognizance of the need to adjudicate the parcels of land and issue the exparte Applicants with titles and it imperative upon the 1<sup>st</sup> Respondent to move with speed and complete the adjudication of the new Kiare Scheme. I order that a copy of this Judgment be served on the Cabinet Secretary – Ministry of Lands and Settlement to consider initiating and expediting the adjudication process in the new Kiare Adjudication area or such other name as may be established by the Adjudication Officer over the said parcels of land.

15. The application has no merit and is hereby dismissed with costs to the Interested Party and the Respondent.

**DATED, DELIVERED AND SIGNED AT MERU THIS 28<sup>TH</sup> JUNE 2018**

**J.G. KEMEI**

**JUDGE**

**In the presence of:**

C/A Mutua

Muthamia holding brief for Gitonga for 1<sup>st</sup> to 13<sup>th</sup> Applicants

Kiongo for 1<sup>st</sup> to 3<sup>rd</sup> Respondents