



**REPUBLIC OF KENYA**

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

**E.L.C JR 90 OF 2011**

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

**AND**

**IN THE MATTER OF THE LAND CONSOLIDATION ACT (CAP 283**

**AND**

**IN THE MATTER OF THE LAND ADJUDICATION ACT (CAP 284)**

**AND IN THE MATTER OF OBJECTION NO. 1169**

**AND**

**IN THE MATTER OF LAND PARCEL, NO 1848**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VS**

**THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT.....1<sup>ST</sup> RESPONDENT**

**THE DISTRICT LAND ADJUDICATION & SETTLEMENT**

**OFFICER - IGEMBE/TIGANIA DISTRICT.....2<sup>ND</sup> RESPONDENT**

**PATRICK NG'OLUA M'ARAURA.....INTERESTED PARTY**

**M'MAMIRA M'KIAMBATI.....EX-PARTE APPLICANT**

**JUDGMENT**

1. On 7/2/11 the Applicant applied and was granted leave on 9/2/11 to file an application for an order for certiorari to quash the proceedings and award of the Land Adjudication and Settlement Officer of Tigania District in objection No. 1169 relating to LR No. 1848 within Athinga Athanja Adjudication Section.

2. Pursuant to the leave stated in Para 1 above the Applicant on 2/3/11, filed the substantive motion on the same date. In the said application the Applicant seeks orders for quashing the proceedings and award of 2<sup>nd</sup> Respondent dated 10/9/2010 in the Land & Adjudication relating to Igembe Tigania objection No. 1169 on Land Parcel No. 1848 (Suit land) within the aforesaid adjudication section. He also seeks costs of the application.

3. The application is annexed to the grounds set out in statutory statement of facts dated 7/2/11, and the verifying affidavit sworn on even date and summarized in the Notice of Motion aforesaid as follows;

a. That the proceedings and the final award in the Land Adjudication and Settlement Officer Igembe Tigania Objection No. 1169 are null and void *ab initio* since in contravention of rules of Natural justice since the ex-parte Applicants was summoned over land

parcel No. 2326 but the 2<sup>nd</sup> Respondent proceeded to hear objection over land parcel No. 1848.

b. That the 2<sup>nd</sup> Respondent acted unfairly and injudiciously when he summoned the Applicant over land parcel No. 2326 and proceeded to hear objection on land parcel No.1848.

c. That the 2<sup>nd</sup> Respondent failed to have regard on the law of representation when he entertained the interested parties objection who had no locus standi to claim his late father's land having not obtained the requisite letters of administration.

d. That the 2<sup>nd</sup> Respondent failed to have regard to the clan elder's findings despite the fact that the interested party had sought and had the objection taken to the elders for determination.

e. That the 2<sup>nd</sup> Respondent relied on extraneous and irrelevant facts in allowing the interested party's objection.

4. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents together with the interested party were served with the application filed by the Applicant. They all have not filed any documents to oppose the applications. Nevertheless on 13/11/07, Counsel for the Applicant Mr. Gichunge and Mr. Kiongo representing the 1<sup>st</sup> & 2<sup>nd</sup> Respondents appeared before the Court and undertook to prosecute the application by way of written submissions. The Court directed that the written submission be filed on or before 30/11/17.

5. It appears that the parties did not file written submissions within the time agreed and set by the Court. Nevertheless on 19/12/17 the Applicant filed his written submissions dated 10/12/17. The 1<sup>st</sup> & 2<sup>nd</sup> Respondents together with the interested party have not filed any submissions.

6. The major issue for determination is whether the 2<sup>nd</sup> Respondent's decision made on 10/9/10 was arrived at procedurally and whether the actions of the 2<sup>nd</sup> Respondent were irrational.

7. The 1<sup>st</sup> Respondent was by dint of Section 26 bound to hear the objection with the aid of the committee. Ideally the proceedings should be minuted.

8. I have perused the proceedings relating to the proceedings as recorded on 13/12/08. These are annexed to the verifying affidavit of Applicant. The proceedings do not disclose any other person as being present together with the 1<sup>st</sup> Respondent's officer Philip A. Awando. This record is testimony of a clear departure to the proceedings envisaged in Section 26(1) of the Land Consolidation Act (LCA).

9. Annexure MMI is the affidavit of the Applicant comprising proceedings relating to objection No. 1690 and 1169 in respect of the suit land. Objection No. 1690 was dismissed by the 2<sup>nd</sup> Respondent on 2/4/2008 thereby affirming ownership of the suit land by the Applicant, that is to say the Applicant is the owner. In the same proceedings curiously objection No. 1169 was on 10/9/10 allowed by the 2<sup>nd</sup> Respondent thereby dispossessing the Applicant of the same subject land. The 2<sup>nd</sup> Respondent appears to have been sitting on appeal against his previous decision in contravention of 26(3). This actions of the 2<sup>nd</sup> Respondent may be described as irrational and illogical. It is one of the basis for which the decision of the 2<sup>nd</sup> Respondent is being challenged.

10. The applicant has raised an issue that the A/R objection 1169 was in respect to land No 2326. During the proceedings it is on record that the applicant stated that he did not know the land under objection. In the same breath goes on to state that the land is his brother's, M'Mathiu. The 2<sup>nd</sup> Respondent however in his finding stated that in accordance with the record the applicant lied as the land is recorded under his name. There is no evidence to support the averment of the applicant and the Court makes no finding on this.

11. As to whether the applicant was summoned for LR No 2326 and instead the 2<sup>nd</sup> Respondent proceeded to hear an objection in respect to L.R No 1848, I have perused the proceedings and I cannot see any summons to determine whether or not the summons were in respect to L.R No 2326 or L.R. 1848. The applicant in his verifying affidavit dated the 7.2.2011 referred to summons marked as MM4, however, the same are not annexed to the record. This ground is unsupported and in any event the applicant fully participated in the said proceedings and there is no evidence of any objection to the proceedings on account that the subject matter was different from that which was stated in the summons.

12. The procedure undertaken by the 2<sup>nd</sup> Respondent in arriving at the decision in 1169 is doubtful. Given that the said decision is not the subject of these proceedings the Court would not proceed to pronounce itself thereon. However, the suit property is the same. It is difficult for the Court to follow the reasoning and proceedings of the 2<sup>nd</sup> Respondent.

13. The findings in Paragraphs 8 & 9 above are sufficient to dispose of the Judicial Review.

14. In the circumstances, I make the following orders;

a. The Notice of Motion of 2/3/11 be and is hereby allowed.

b. An order of certiorari be and is hereby issued calling for and thereby quashing the proceedings and award of the 2<sup>nd</sup> Respondent dated 10/9/10 in respect of 1169 relating to Land Parcel No. 1848 within Athinga/Athanja Adjudication section.

c. The Applicant shall have the costs of the application to be paid by the 2<sup>nd</sup> Respondent.

Orders accordingly.

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

**J G KEMEI**

**JUDGE**

In the presence of

C/A Mutua

Aketch holding brief for Githinji for applicant

Kiongo for 1<sup>st</sup> & 2<sup>nd</sup> respondents

N/A for interested party