



**REPUBLIC OF KENYA**

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

**ELC JR NO 2 OF 2013**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW FOR AN ORDER OF PROHIBITION.**

**AND**

**IN THE MATTER OF THE LAW REFORM ACT, CAP 26 LAWS OF KENYA AND ORDER 53 OF THE CIVIL PROCEDURE RULES.**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VS**

**LAND ADJUDICATION OFFICER**

**ANKAMIA ADJUDICATION SECTION.....1<sup>ST</sup> RESPONDENT**

**HON. ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**AND**

**PATRICK GITUMA M'MUGWIKA.....INTERESTED PARTY**

**SOLOMON MATHIU NABEA.....EX-PARTE APPLICANT**

**JUDGMENT**

1. The Applicant by Chamber Summons dated 9/1/13 applied and was on even date granted leave to apply for an order of Certiorari to call into the Court and quash the decision of the 1<sup>st</sup> Respondent dated 9/11/12 in objection No. 541 over LR No. P/No. 1845 (suit land) situated in Ankamia Adjudication section.
2. Pursuant to the leave granted in Para 1 above the Applicant filed a Notice of Motion dated 29/1/13 on even date. The Applicant seeks the order described in Para 1 above together with costs of the application.
3. The grounds of the application are set out in the statutory statement of facts dated 9/1/2013, verifying affidavit of even date. The grounds are summarized as follows;

a) That the 1<sup>st</sup> Respondent usurped the powers of the land committee in hearing the said objection, contrary to section 9,11and 26 of the Land Consolidation Act, Cap.283.

b) That the ex-parte Applicant was denied a fair hearing in that he was not allowed to call his three (3) witness present during the hearing.

c) That the 1<sup>st</sup> Respondent determined the matter un-procedurally, irregularly, unreasonably, irrationally, illegally and improperly.

4. The 1<sup>st</sup> Interested Party opposed the application by a replying affidavit sworn on 3/4/13. The grounds of objection may be summarized as follows;

a) That the suit land was not the property of the Applicant but family land owned by the 1<sup>st</sup> Interested Party's grandfather, namely Baing'oni.

b) That the suit land was measured by the Applicant on the understanding that another family land at Kiangorwe would be registered in the 1<sup>st</sup> Interested Party name but the Applicant refused that to be done.

c) The 1<sup>st</sup> Interested Party filed a case No. 178/81/82 where it was ruled that the suit land be divided into 2 equal shares.

d) The 1<sup>st</sup> Interested Party and the Applicant have been living in the suit land for a long time even before the year 1967.

e) The Interested Party filed an objection No. 541 because the land committee had ruled in his favour to the effect that the ex-parte Applicant transfers 0.670 acres to the 1<sup>st</sup> Interested Party instead of the land being shared equally.

f) There was no collusion between the 1<sup>st</sup> Interested Party and the 1<sup>st</sup> Respondent leading to the decision of 9/1/12 being challenged in these proceedings.

5. The 1<sup>st</sup> Respondent filed a replying affidavit sworn on 26/6/13 by Philip Ager Awando who was the Land Adjudication Officer in Tigania East and West Districts where the suit land is situated. His grounds of objection are as follows; That he conducted a hearing of the A/R objection No. 541 in the presence of Land Committee members of Ankamia Adjudication section; on 11/9/12 he heard the objection in the presence of the said Land Committee members; That he delivered a decision on 9/11/12 in the presence of both parties and Land Committee members in favour of the Interested Party; that he accorded all the parties a fair hearing by paying a visit to the suit land.

6. On 12/3/18 the parties appeared before the Court and agreed to canvass the application by way of written submissions. The Court directed them to file written submissions by 10/5/18. The Applicant and the Interested Party filed written submissions on 17/4/18 and 23/5/18 respectively.

7. The 2<sup>nd</sup> Respondent did not oppose the application or file any submissions thereon. The 1<sup>st</sup> Respondent too did not file any submissions.

8. The Court has read and considered the pleadings, the submissions filed in this case. The major issue for determination is whether the 1<sup>st</sup> Respondent adopted the correct procedure in arriving at the decision being challenged.

9. The objection was filed pursuant to the provisions of Land Consolidation Act chapter 283 of Laws of Kenya. The centrality of proceeding under that Act in Land Adjudication is by way of committees. See the case of **Peter Kimandiu Vs Land Adjudication Officer, Tigania East District and 4 others CA NO 28 OF 2015-Nyeri**.

10. 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. The said section states as follows;

“ Any person named in or affected by the Adjudication Register who considers such Register to be inaccurate or incomplete in any respect, or who is aggrieved by the allocation of land as entered in the Adjudication Register, may, within sixty days of the date upon which the notice mentioned in section 25 of this Act is published at the office of the Regional Government Agent within whose district the adjudication area to which such Register relates is situated (and such date shall be endorsed upon the said notice), inform the Adjudication Officer, stating the grounds of his objection, and the Adjudication Officer shall consider the matter with the Committee and may dismiss the objection, or, if he thinks the objection to be valid, order the Committee to take such action as may be necessary to rectify the matter and for this purpose the Committee may exercise all or any of the powers conferred by section 21 of this Act”. ( emphasis is mine).

11. I have perused the proceedings relating to the proceedings as recorded on 11/9/12. These are annexed to the 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 Ager Awando. This record is testimony of a clear departure to the proceedings envisaged in Section 26(1) of the Land Consolidation Act, Cap 283 (LCA).

12. The findings in Para 11 are sufficient to dispose of the Judicial Review. I need not go into the other issues raised.

13. In the circumstances I make the following orders:

a) Application Notice of Motion dated 29/1/13 be and is hereby allowed.

b) The proceedings and the decisions made by the 1<sup>st</sup> Respondent on 9/11/12 in respect of the suit land in objection No. 541 are removed and called into this Court and quashed as prayed.

c) The 1<sup>st</sup> Respondent and the interested party to pay the Applicant costs of the application jointly and severally.

**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

Muchiri holding brief for Carl Peters Mbaabu

Ms. Wambugu holding brief for B.G Kariuki for interested party

Kiongo for Respondents