



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW APPLICATION NO.10 OF 2013

IN THE MATTER OF APPLICATION BY M'LINGERA M'NGUTHARI FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI

AND

IN THE MATTER OF LAND PARCEL NO. 3677 ANTUAMBURI ADJUDICATION SECTION

AND

IN THE MATTER OF LAND CONSOLIDATION ACT CAP 283

PARTIES

REPUBLIC.....APPLICANT

VS

THE LAND ADJUDICATION OFFICER TIGANIA DISTRICTS.....RESPONDENT

M'ALAINE YUSUF MAITHIMA.....INTERESTED PARTY

EXPARTE

M'LINGERIA M'NGUTHARI

RULING

1. On the 6.5.2013 the Applicant filed a Notice of Motion under Order 53 rule 3 of the Civil Procedure Rules, 2010 and section 8 & 9 of the Law Reform Act seeking the orders as follows; -

a) That this Honourable Court be pleased to issue an order of certiorari to remove to this Court the decision of the Land Adjudication officer Tigania District made on the 12.4.2013 in objection case involving land parcel No 3677 Antuamburi Adjudication section and quash the same and other orders made therein without jurisdiction and against the law of the land.

2. The application is supported by the grounds stated in the statement of facts and the verifying affidavit of the Exparte Applicant M'Lingera M'Nguthari both dated the 22.4.2013. The Exparte Applicant deponed that he is the owner of Land Parcel No 3677 consolidated and measuring 3.20 acres acquired as follows; 2.70 acres was family land and 0.5 acres was bought from the interested party's father in 1966. That the Interested Party filed an objection in 2010 claiming that the suit land belonged to his deceased father. The objection was heard and determined by the Land Adjudication Officer Tigania and awarded the Interested Party 1.50 acres of the parcel of land. Aggrieved by the decision the Exparte Applicant filed a Misc. Application No 35 of 2010 where the Court quashed the decision of the Land Adjudication Officer and directed that the matter be heard afresh with the aid of the committee. The matter was heard and a determination thereof was issued on the 12.4.2013. The Exparte Applicant is aggrieved by the decision and hence this judicial Review.

3. The Exparte Applicant further maintains that the Respondent refused to follow the procedure as set out under section 26 of the Land Consolidation Act Cap 283. That the Respondent was biased and refused some committee members to participate in the proceedings. That the Respondent lacked jurisdiction in arriving at the determination as the committee was under a duty to proceed under section 21 of the Land Consolidation Act. Further that the Interested Party has no letters of administration to entitle him to claim a share of his father's estate. That the Respondent showed bias by ordering that the Interested Party be given 1.50 acres in excess of 0.50 acres of the land bought from his late father.

4. The Interested Party resisted the JR application by filing a chamber summons under Order 2 rule 15 (1) (b), (c), & (d) of the Civil Procedure Rules and Section 7 of the Civil Procedure Act seeking orders that the application dated the dated the 22.4.2013 be struck out for being an abuse of the process of the Court and that it is res judicata. In the supporting affidavit the Interested Party deponed that he is the registered owner of Parcel No 3677 Antuamburi adjudication section. That vide JR 35 of 2010, the Court directed that this matter be heard afresh which was done and was awarded 1.50 acres of Parcel No 3677. That this application is similar to JR 35 of 2010 as it raises the same issues. That the Exparte Applicant ought to have appealed the decision instead of filing another judicial review. This amounts to an abuse of the process of the Court.

5. The Exparte Applicant filed a replying affidavit on the 16.7.2013 where he deponed that he is the owner of Parcel No 3677 measuring 3.20 acres. He admitted filing the JR 35 of 2010 but insists that though the matter was reheard, the Respondent did not comply with section 26 of the Land consolidation Act. That he made a decision which was disowned by the committee present who refused to sign. That JR 35 of 2010 was premised on different set of facts and thus completely different and therefore the application is not resjudicata.

6. Parties elected to file written submissions which I have carefully considered.

7. The Exparte Applicant submitted that the Respondent colluded with the Interested Party to award the same award as in the previous quashed decision. That he skipped the role of the committee members in the objection proceedings which prompted the members to refuse to sign the objection proceedings. That the proceedings being sought to be quashed cannot be said to be res judicata because the previous proceedings were quashed in its entirety the result of which they became null and void. That this is a fresh application independent of the quashed proceedings.

8. The Interested Party submitted that the application is similar to the application JR No 35 of 2010 which the Court allowed. That the application raises similar issues between same parties and same subject matter. That it is clearly res judicata. He faulted the Exparte Applicant in failing to give evidence in support of his allegation of bias against the Respondent and the committee in arriving at the decision it did.

9. The Respondent associated itself with the submissions of the interested part and submitted that the application fits the bar of resjudicata and is essentially an abuse of the process of the Court and should be struck out. That the Exparte Applicant has made sweeping and generalized accusations against the Respondent which are unsupported. That the allegation of bias is also unsupported by any evidence or particulars.

The issues for determination.

10. Whether the application is resjudicata; whether the application should be struck out; who meets the cost of the application.

11. Section 7 of the Civil Procedure Act states as follows;

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court”.

12. In this instant application, it is on record that the previous proceedings and the application in JR 35 of 2010 are between the same parties, same issues and same subject matter. Though the earlier proceedings and decision was quashed by the Court that directed that the matter be reheard afresh with the aid of the committee, the Respondent returned the same verdict as before. I find that the application is res judicata. Litigation must come to an end.

13. The Exparte Applicant has insisted that the Respondent flouted the procedure under section 26 of the Land consolidation Act. That section states as follows;

“(1) 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).

(2) If the Adjudication Officer considers that such rectification would incur unreasonable expense, delay or inconvenience, he may award such compensation in lieu of rectification as he may deem appropriate.

(3) No appeal shall lie against any decision by the Adjudication Officer to dismiss an objection or order rectification or to award compensation in lieu of rectification, as the case may be, but the Minister or any person to whom compensation has been awarded and who is dissatisfied with the amount awarded by the Adjudication Officer may apply to a subordinate Court held by a Resident Magistrate for its revision in such manner as may be prescribed.

(4) Any compensation awarded by the Adjudication Officer under this section, together with such costs as the Court may award, shall be paid by the Minister”.

14. It is the Exparte Applicant's averment that the Respondent did not involve the committee members. A perusal of the proceedings indicate that the committee members were present throughout the proceedings. No evidence to the contrary has been adduced by the Exparte Applicant to support his assertions.

15. The Exparte Applicant faults the Respondent for not authorizing the committee to exercise their powers conferred under section 21 of the Act. It is not clear how the provisions of this section are relevant to the exparte Applicant. The wording of section 26 is discretionary on the committee and the Respondent as to which options they can exercise. It states that 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.

16. It is clear from the proceedings that the committee and the Respondent considered the matter and arrived at a decision which they did. It would appear that the Exparte Applicant has a desired outcome in mind which is different from the one the committee and the Respondent reached. There is no evidence adduced by the Exparte Applicant to suggest that the decision arrived at by the Respondent was out of jurisdiction or biased as alleged. Further the particulars of fraud stated in his submissions have not been pleaded with the necessary particularity to warrant the Court to investigate it.

17. As to the allegation that the committee members refused to sign the award, there are no provisions that require the committee members to sign the award. The Respondent has the final authority under the Act in respect to objections in respect to the register. Allegations of want of jurisdiction on the part of the Respondent are therefore unfounded.

18. In the end the Judicial Review application is struck out for the reasons adduced above. Costs shall follow the event and therefore costs are in favour of the Interested Party/Applicant.

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

J. G. KEMEI

JUDGE

In the presence of:

C/A Mutua

Muchiri for exparte Applicant

Kiongo for Respondent

Mwiti holding brief for Kimathi kihara for interested party