



M'Igweta alias Jadiel Karitho M'Igweta v District Land Adjudication and Settlement Officer Tigania District; M'Ethambu (Interested Party) (Judicial Review 13A of 2012) [2018] KEELC 1879 (KLR) (14 June 2018) (Judgment)

Jadiel M'Imuchi M'Igweta v District Land Adjudication and Settlement Officer - Tigania District [2018] eKLR

Neutral citation: [2018] KEELC 1879 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW 13A OF 2012

EC CHERONO, J

JUNE 14, 2018

**IN THE MATTER OF THE CONSTITUTION OF KENYA SECTION 81 & 84,
SECTION 8 & 9 OF THE LAW REFORM ACT, THE LAND ADJUDICATION
ACT CAP 284 AND ORDER 53 RULES 1, 2 & 4 CAP 21 LAWS OF KENYA**

AND

IN THE MATTER OF LAND PARCEL NO. 6209 KIANJAI ADJUDICATION SECTION

BETWEEN

JADIEL M'IMUCHI M'IGWETA ALIAS JADIEL KARITHO M'IGWETA...APPLICANT

BETWEEN

**JADIEL M'IMUCHI M'IGWETA ALIAS JADIEL KARITHO
M'IGWETA APPLICANT**

AND

**THE DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER
TIGANIA DISTRICT RESPONDENT**

AND

JOHN M'LINGERA M'ETHAMBU INTERESTED PARTY



JUDGMENT

Introduction

1. The exparte applicant who is also named as the appellant in this case instructed the firm of Haron Gitonga & co. advocates who filed an exparte application under certificate of urgency for leave to apply for an order of certiorari to remove into this honourable court for purposes of quashing the decision of the district land adjudication and settlement officer Tigania District made on 16th April 2012 purporting to change the location of the land parcel no. 6209 from its current location to another location.
2. The exparte applicant also sought leave of this honourable court for an order of prohibition to prohibit the district land adjudication and settlement officer Tigania district from displacing on the maps and ground land parcel no. 6209 Kianjai land adjudication in the name of any person pending hearing and determination of the substantive motion. In the statement of facts supporting that chamber summons, the exparte applicant stated that he bought the suit land from the interested party in 1987 and immediately took possession where he laid a foundation for a permanent building.
3. On 16th April 2012, the exparte applicant discovered that the respondent in collusion with the respondent had interfered with the map of the suit land by deleting the suit land on its correct site in the map and moved the same about two (2) kilometres away from the site where he bought it.
4. He stated that the change of the map was done secretly and without according the exparte applicant a hearing. Attached to that chamber summons is an agreement for sale of land between the interested party as the vendor and the exparte applicant as the purchaser. Also attached to that application is a Kianjai adjudication section sheet no. 23 plot no. 6209, a receipt no. 8689387 two photographs and a map for Eastern province Meru North District.
5. When the application was placed before the duty court the same was certified urgent to be heard exparte in the first instance. The exparte applicant was also granted orders in terms of prayers no. 2, 3 & 4. This honourable court also directed the exparte applicant to file and serve the main motion within 21 days.
6. On 14/05/2012 the exparte applicant filed the substantive notice of motion. On 9th October 2012 the interested party filed a replying affidavit opposing the application stating that indeed he sold the exparte applicant a portion of land measuring 20 ft x 100 ft to be excised from folio no. 1200 Kianjai part II, and thereafter instructed the lands office personnel to excise the said portion of 20 ft x 100 ft from the mainland and have it registered in favour of the exparte applicants name as no. 6209. Without his knowledge, the exparte applicant excised the 20 ft x 100 ft from another parcel of land folio no. 5050. The interested party attached a copy of a letter dated 24.9.1991 which the exparte applicant fraudulently used to acquire p. no 6209 from parcel no. 5050 instead of 1200. He later instructed his lawyer to write him a demand letter dated 17/11/2011.
7. When this case came up for directions, the exparte applicant and the interested party through their legal representatives agreed to dispose of the same by way of written submissions. However at the close of the deadlines, none of the parties had filed submissions.

Analysis And Determination

8. The gist of the exparte applicant's application is a decision by the respondent made on 16th April 2012 changing the location and/or site of land parcel no. 6209 Kianjai Adjudication both on the map and



ground. The exparte applicant also alleges that the purported action by the respondent of changing the map and deleting it from the correct site and purporting to plot it two kilometres away is illegal unlawful arbitrary and unconstitutional.

9. Section 16 of the [land consolidation act](#) cap 283 which is similar to section 25 of the [land adjudication act](#) cap 284 gives directions on what the land adjudication officer should do once the adjudication register has been completed. Section 17 which is also similar in all respect with section 26 of the [Land Consolidation Act](#) provides as follows:

“If any person named in or affected by part 1 of the record of existing rights who considers the record to be inaccurate or incomplete in any respect may within sixty days of the date upon which the notice mentioned in section 16 of this act is published at the office of the regional government agent within whose district the adjudication area to which the record relates is situated (and such date shall be endorsed upon the said notice), lodge an objection with the executive officer of the committee concerned stating in what respect the record is alleged to be inaccurate or incomplete”.

10. Section 26 of the [land consolidation act](#) cap 284 provides thus:

“26 (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”.

11. The exparte applicant has not shown that he has expressed his grievance to the adjudication officer in writing within sixty days from the date of the alleged decision.

12. The exparte applicant has not shown in what respect the adjudication register is incomplete or incorrect. This court has not even been shown in whose name the plot no. 6209 has been recorded according to the register. Parliament through legislation has given administrative functions to certain institutions leaving supervisory jurisdiction to the high court under article 165 (6) of [the constitution](#).

13. In civil appeal no. 180 of 2013 Isack Osman vs. IEBC & others the court expressed itself in the following terms;-

“A judicial review of administrative judicial and quasi-judicial action and decisions of interior bodies and tribunals by the high court in exercise of its supervisory jurisdiction flowing from article 165 (6) of [the constitution](#) is not in the nature of an appeal. It concerns itself with process and is not a merit review of the decision of those other bodies, and it does not confer on the High Court power to arrogate to itself the decision making power reserved elsewhere”.

14. Article 97 of [the constitution](#) also provides that;

“Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.



15. Again in *Municipal Council of Mombasa Vs Republic & Umoja Consultant Ltd* Civil Appeal no. 185 of 2001, it was held;

“Judicial review is concerned with the decision making process not with the merits of the decision itself. The court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the person affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters..... The court should not act as a court of appeal over the decider which 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..... it is the duty of the decision maker to comply with the law in coming to its decision, and common sense and fairness demands that once the decision is made it is his duty to bring it to the attention of those affected by it more so where the decision maker is not a limited liability company created for commercial purpose but it a statutory body which can only do what is authorized by the statute creating it and in the manner authorized by statute”.

16. The *land consolidation act* cap 283 and the *land adjudication act* cap 284 respectively provide an elaborate procedural requirements demanded by the adjudication officer and other officers writing under him in ascertaining individual rights and interests in land under adjudication. It is only by looking at these proceedings and decision that the High Court in exercise of its judicial review powers can determine whether the persons affected by the decision were heard before it was made and whether in making the decision the judicial officer took into account relevant matters or not. Since the exparte applicant has not attached a copy of the alleged impugned decision or the proceedings thereof, it is inconceivable for this court to make a determination on the orders being asked to grant.
17. I also note that the subject matter of this case is a parcel of land no. 6209 situated at Kianjai adjudication section. Being a parcel of land under adjudication, it was imperative for the exparte applicant to seek and obtain consent from the adjudication officer to institute court proceedings pursuant to section 8 as read with section 30 of the land consolidation and adjudication act cap 283 and 284 respectively. The exparte applicant did not attach a copy of the consent to institute these proceedings.
18. In the upshot, the exparte applicant’s application lacks merit and the same is hereby dismissed with costs.

READ, DELIVERED AND SIGNED IN THE OPEN COURT THIS 14TH DAY OF JUNE, 2018

MR. E.CHERONO

ELC JUDGE

In the presence of:

CC: Galgalo

Mr. B.G Kariuki for interested party

N/A for exparte applicant

