



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW NO. 24 OF 2012

REPUBLIC OF KENYA APPLICANT

VS

IGEMBE NORTH DISTRICT LAND

ADJUDICATION & SETTLEMENT OFFICER 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

AND

SAMSON M'MBUGU M'MWENDA INTERESTED PARTY

EZEKIEL M'ITHA EX PARTE APPLICANT

JUDGMENT

INTRODUCTION

The Exparte applicant Ezekiel M'Itha moved this court by way of a chamber summons dated 30th July, 2012 under Order 53 Rule 1 CPR and Section 8 & 9 of the Law Reform Act Chapter 26 Laws of Kenya seeking for the following orders:

(a) Spent

(b) That this Honourable court be pleased to grant leave to the applicant to apply for a judicial review order of certiorari to bring into the High Court and quash the proceedings and award of the Igembe North District Land and Settlement Adjudication Officer in LDT No. 2285/2010 delivered on 18th May, 2012.

(c) That this Honourable court be pleased to grant leave to the applicant to apply for a judicial review order of prohibition to prohibit the implementation of the decision of the Igembe North District Land and Settlement Officer in LDT No. 2285/2010 delivered on 18th May, 2012.

(d) That the leave so granted do operate as stay of implementation of the award in LDT No. 2285/2010 pending filing and determination of the main motion on notice.

(e) That costs of this application be borne by the respondents and interested party.

The said application was filed under certificate of urgency and upon placing the same before the duty judge, the same was certified urgent and orders were granted in terms of prayers No. a,b,c and d thereof. In addition, the Exparte Applicant was directed to file and serve the substantive motion within 21 days from the 8/7/2012.

On 28/8/2012 the Exparte applicant filed the substantive motion seeking the judicial review orders of certiorari to quash the proceedings and the award of the Igembe North District Land Adjudication and Settlement Officer dated 18th May, 2012 and an order of prohibition prohibiting the same officer from implementing the said decision of 18th May, 2012 on 5th November, 2012. The interested party filed a replying affidavit opposing the Notice of motion. The respondent did not file any response to the said application. When the matter came up for directions on 22/1/2018 the parties agreed by consent to dispose of this judicial review application by way of written submissions.

EXPARTE APPLICANTS CASE

The Exparte applicant in his Exparte chamber summons dated 30/7/12 stated in the 1st affidavit verifying the facts that he is the rightful owner of Land parcel No. 325 Antu Betwe Kiongo Adjudication section having been banqueted to him by his grandfather (deceased). The interested party who is his uncle sued him before the Land Disputes Tribunal claiming that the land parcel No. 325 Antu Betwe Kiongo Adjudication section was his portion, the same having been curved out of his land. He stated that the said parcel of land was given to him by his grandfather as a gift for having herded his livestock. They appeared before the Land Adjudication Officer on 3rd February, 2011 and on 10/5/2011 respectively.

On 23rd February, 2012 the interested party's objection was dismissed. After the ruling was delivered, he visited the Offices of the 1st Respondent with a view to buy copies of the ruling and proceedings but he was declined. However, on 22/5/2012, he managed to obtain a copy of the proceedings and the ruling. To his surprise and consternation he found that the ruling was contrary to what was delivered by the 1st respondent as the same was against him but in favour of the interested party. He stated that he did not participate in the ruling of 18/5/2012 as he was not informed.

The 2nd verifying affidavit in support of that chamber summons is sworn by one Samuel Njuki who is one of the Land Committee member, Antu Betwe Kiongo Adjudication section. The member stated on oath that he was familiar with the subject of this judicial review. He stated that the parties were heard before the Land Adjudication Committee on 3rd February, 2011 and 10th May, 2011 and ruling was to be delivered on 30/1/2012. However, the ruling was not delivered as scheduled and the same was rescheduled to 23rd February, 2012. On 23/2/2012 the ruling was delivered in his presence. Later, the Exparte applicant informed him that the ruling date did not reflect that of 23/2/2012. The Ex parte applicant showed him a copy of the ruling which indicated that it was delivered on 18/5/2013. The deponent stated that he is not aware of such a ruling delivered on 18/5/2012 the deponent confirmed that the ruling of 23rd February, 2012 was in the Exparte applicants favour and that the second ruling purported to have been delivered on 18/5/2012 is an irregularity. He attached copies of the proceedings and ruling.

THE INTERESTED PARTY'S CASE

The interested party in his replying affidavit sworn on 29/10/2012 opposed the application stating that his late father Mwenda M'Kiraiuri was survived by seven sons, him included who allowed them to gather all his parcels of Land and got shares registered in their respective names. He gave the names of his siblings as Ibrahim, M'Kiunga, Kiampo, M'Itabari, M'Imuti M'Mwika and himself. He further stated that the Ex parte applicant is son to their eldest brother and that he never inherited any Land directly from their father but rather he is entitled to a share of his father land. The interested party also noted that when the Adjudication Committee found in his favour, they had consulted all the records. He stated that there was no support for the applicants claim. The interested party also stated that the proceedings attached to the verifying affidavit reflect the correct position save that there was no ruling or decision delivered on 18/5/12.

EXPARTE APPLICANT'S SUBMISSIONS

The Ex parte applicant through the firm of Mithega & Kariuki Advocates submitted that the 1st respondent acted ultra vires by failing to involve other committee members in reading the decision made on 18/5/2012 and that was at most partial and extremely biased in his verdict contrary to the tenets of natural Justice and fairness. On the issue of the Law, the learned counsel cited the following cases in support:

- 1. Republic Vs Inspector General of Police Exparte Patrick Nderitu JR No. 130 of 2013(2015) eKLR**
- 2. Stephen Mutuku Muteti Vs Director of Land Adjudication & Settlement & 3 others(2005) eKLR**

INTERESTED PARTY'S SUBMISSIONS

The interested party failed to file submissions within the time directed by the court to do so.

RESPONDENTS SUBMISSIONS

The respondents also failed to file submissions to this judicial review application.

ANALYSIS AND DETERMINATION

I have examined all the documents both in support and in opposition to the application herein. I have also considered averment given by the parties and their submissions. The Exparte applicant's complaint against the respondents and the interested party purported to have been delivered on 8/5/2012. The Exparte applicant also complains that the 1st respondent acted ultra vires by failing to involve other committee members in reaching the decision made on 18/5/2012. Those two in my view are the main issues for determination by this court. The other grounds stated in the grounds upon which the application is based in my view are issues founding on the merit of the decision and not procedural aspect. In addressing the first grounds, the counsel for the Exparte applicant has submitted that the Land Adjudication Officer in arriving at the decision delivered on 18/5/12 failed to involve the committee members as required in Law. By implication, the counsel is submitting that the applicable law in this case is the Land Consolidation Act Chapter 283 Law of Kenya Section 26 of the Land Consolidation Act Cap. 283 provides for a requirement for a committee to be involved at the stage of objections. Having looked at the proceedings attached to the verifying affidavit sworn by the Ex parte I find no involvement of committee under Section 26(1) of the Land Consolidation Act. The said section reads as follows:

“ 26(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....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 that purpose the committee may exercise all or any of the powers conferred by section 21 of this Act”.

From my examination of the said section, it is clear in my mind that it is mandatory for the Land Adjudication officer to sit with the committee. Failure by the Land Adjudication Offices to comply with this mandatory provision of the law renders the decision delivered on 18/5/12 null and void for being ultra vires. In the result therefore, I find this judicial review merited and the same is allowed in terms of the prayers sought in the notice of motion dated 27th August, 2012.

Read, delivered and signed in the open court this 14th day of June, 2018.

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Mr. E.C. Cherono

ELC JUDGE