



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MERU**  
**JUDICIAL REVIEW NO. 37 OF 2012**  
**IN THE MATTER OF LAND ADJUDICATION ACT CAP 283**  
**LAWS OF KENYA**  
**AND**  
**IN THE MATTER OF LAND PARCEL NO. 1224 WITHIN ANKAMIA**  
**LAND ADJUDICATION SECTION**  
**BETWEEN**  
**REPUBLIC.....APPLICANT**  
**VERSUS**  
**DISTRICT LAND ADJUDICATION &**  
**SETTLEMENT OFFICER, TIGANIA.....RESPONDENT**  
**AND**  
**REBECCA KAUNA M'MWIRABUA.....INTERESTED PARTY**  
**FREDRICK NCEBERE MWIRABUA....EXPARTE APPLICANT**  
**JUDGMENT**

**INTRODUCTION**

1. The exparte applicant Fredrick Ncebere Mwirabua had moved this court by way of a chamber summons dated 11<sup>th</sup> December 2012 under order 53 rule 1 (1) (2) and (4) CPR and section 8 (2) and 9 of the law reform Act chapter 26, laws of Kenya seeking for *inter alia* leave to apply for judicial review orders of certiorari to remove into this honourable court the decision of the respondent for purpose of quashing.
2. That application which was brought under certificate of urgency was placed before the duty court who upon considering the same and the materials in support thereof certified it urgent to be heard exparte. The duty court also granted leave to the exparte applicant to apply for the judicial review orders and the leave so granted was to operate as a stay of implementation of the said decision by the respondent herein. On 9<sup>th</sup> January 2013, the applicant filed the substantive motion under order 53 rule 3 (1) CPR as read with section 8 and 9 of the law reform act chapter 26 laws of Kenya. The interested party instructed the firm of Ayub Anampiu & co. advocates to act for her while the respondent instructed Mr. Kieti working in the office of the Hon. Attorney General to act for him.
3. When the matter came up for directions on 11.6.2015, the parties through their legal representatives agreed to dispose of the Judicial Review application by way of written submissions.

**EXPARTE APPLICANTS SUBMISSIONS**

4. The applicant stated that he is the registered owner of land parcel no. 1224 within Ankamia adjudication section. He stated that after the officer issued a notice of the completion of the register, the interested party lodged an objection no. 1417 claiming some 7.74 acres from his parcel of land. The exparte applicant averred that the said objection was heard and dismissed on 8/11/2012. The exparte applicant further

averred that later the same day, he went to obtain certified copies of the proceedings and decision of the land adjudication and settlement officer only to be supplied with doctored proceedings indicating that he had purportedly signed to transfer 1.00 acre to the interested party whereby the respondent proceeded to make a 2<sup>nd</sup> decision allowing the same objection no 1417 that had been dismissed earlier. The applicant submits that the notice of motion is not opposed as the respondent and the interested party have not filed any grounds of opposition or replying affidavit.

### **RESPONDENT'S SUBMISSIONS**

5. Despite having agreed to file submissions by consent, the respondent failed to file any submissions at the time of writing this judgment.

### **INTERESTED PARTY'S SUBMISSIONS**

6. The interested party equally failed to file any response to the ex parte applicant's notice of motion or submissions despite being given 21 days to do so.

### **ANALYSIS AND DETERMINATION**

7. The gist of this Judicial Review application are two purported decisions issued by the land adjudication officer, Ankamia adjudication section within Tigania District. The two alleged decisions were purported to have been made the same day.

8. Upon perusal of the proceedings of the impugned decisions dated 8/11/2012, it reflects Rebecca Kauna M'Mwirabua as the objector who had filed the objection on behalf of the estate of her late husband Mwirabua Nkonko (deceased).

9. Her objection was that her late husband left her the disputed parcel of land and wanted the entire land transferred to her.

10. In a brief decision, the adjudication officer dismissed the objection stating that the disputed parcel of land no. 1224 has got zero acreage and that the plot which tool 7.74 acres is plot no. 1608. That decision is signed the same date on 8/11/2012. That decision is crossed with a pen with the words cancelled.

11. However there is no counter signing by the person who allegedly crossed and/or cancelled. On the next page no. 129 the ex parte applicant is shown to have requested the court to transfer 1.00 acre form this plot no.3624 which he had taken from plot no. 1224 belonging to the objector. It is that statement and the second decision which reads as follows:

**“Objection no. 1417 is altered and 1.00 transferred to objector from plot no. 3624 which originated from the original disputed parcel of land.”**

12. The main ground of this Judicial review are the two decision and the proceedings which the ex parte applicant contends were duped to sign a blank paper to reflect that he consented to the transfer of one acre of this land to the objector/interested party. The ex parte applicant in his supporting affidavit to the chamber summons sworn on 11<sup>th</sup> December 2012 which is also in support of this Judicial Review application deposed that the interested party/objector had lodged an objection no. 1417 claiming some 7.74 acres from his parcel of land no. 1224.

13. He further deposed that the objection was heard on 8/11/2012 and the adjudication officer dismissed the same in his presence and all the parties. The decision was duly signed by the adjudication officer. Later the same day he went to buy certified copies of the proceedings and the decision whereupon the respondent requested him to thumb print on a blank paper.

14. Being semi-illiterate and ignorant he obliged and when he went to collect the proceedings he learnt that what he was made to thumb print/sign as a request for proceedings and decision was used as a request to transfer 1.00 acre of his land to the objector/interested party herein.

15. The averments given by the applicant on oath have not been denied, controverted or challenged by either the interested party or the respondent in any respect.

16. The preview of Judicial Review was set out candidly by Lord Diplock in the case of **council for Civil Service Unions vs. Minister for Civil Service (1985) AC 374, at 401 D** when he stated as follows;

*“Judicial Review as I think developed to a stage today when one can conveniently classify under three heads the grounds upon which administration action is subject to control by Judicial Review. The first ground I would call “illegality”, the second “irrationality and the third “procedural impropriety”..... By “illegality” as a ground for Judicial Review I mean that the decision maker must understand correctly the law that regulates this decision making power and must give effect to it .....*

*By “Irrationality” I mean what can now be succinctly be referred to as “Wednesbury unreasonableness”..... it applies to a decision which is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it ..... I have described the third head as “procedural impropriety” rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision”.*

17. I have looked at the impugned decision by the respondent and the averments by the applicant in this case. I find and hold that the

proceedings and the decision issued by the respondent on 8/11/2012 is tainted with illegality, irrationality and impropriety.

18. First the impugned decision was not arrived at in accordance with the provisions of section 18 of the land consolidation act as read with the land adjudication act cap 284 and 283 respectively.

19. The two sections gives an elaborate way of determining an objection. From my reading of the proceedings and decision of respondent it is clear in my mind that he did not follow the law as set out in the two sections. The proceedings of the impugned decision indicates that the exparte was called after the first decision and without being sworn agrees to transfer 1.00 acre to the interested party. In an objection to the adjudication register, the executive officer is required to refer the objection either to the committee or the adjudication officer for onward transmission to the arbitration Board. The impugned decision of 8/11/2012 was made unilaterally by the respondent. Such a decision in my view is irrational and a subject of supervision by this Honourable court. Finally, the decision by the respondent is tainted with impropriety in that the respondent made a first decision unilaterally and cancelled the same unprocedurally. Later the same day he made another decision after duping the applicant who allegedly agreed to transfer 1.00 acre of the disputed land to the interested party. Such a decision is liable for Judicial Review by this Honourable court.

20. For all the reasons I have given I find this Judicial Review merited and the same is hereby allowed on the following terms:

(i) An order be and is hereby issued removing into this honourable court the order of the respondent issued on 8.11.2012 for purposes of quashing the same.

(ii) The costs of this case to be borne by the respondent.

**Read, delivered and signed in the open court at Meru this 14<sup>th</sup> day of June 2018**

**E.CHERONO**

**ELC JUDGE**

**In the presence of:**

CC: Galgalo

Mwenda Mwarania for exparte applicant

N/A for interested party

N/A for respondent