



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

JUDICIAL REVIEW APPLICATION NO. 1 OF 2017

IN THE MATTER OF APPLICATION FOR ORDERS OF JUDICIAL REVIEW BY ANTHONY MUNENE MBUI AND JAMES IRUNGU MBUI

AND

IN THE MATTER OF THE IRRIGATION ACT CAP 347 LAWS OF KENYA

AND

IN THE MATTER OF RICE HOLDING NUMBER 1824 MWEA SECTION OF THE NATIONAL IRRIGATION BOARD – MWEA SETTLEMENT SCHEME

AND

IN THE MATTER OF THE ADVISORY COMMITTEE PROCEEDINGS AND AWARD MADE ON THE 13TH DAY OF JULY 2016

BETWEEN

REPUBLIC APPLICANT

VERSUS

NATIONAL IRRIGATION BOARD RESPONDENT

MERCY WAMUTIRA MUGERA INTERESTED PARTY/APPLICANT

ANTHONY MUNENE MBUI)EXPARTE APPLICANTS

JAMES IRUNGU MBUI)

RULING

[1] This Notice of Motion by way of Judicial Review was filed by the Exparte applicants on 13th November 2017 against the Applicant the Respondent and the Interested party. They prayed for the following orders:

1. That an order of certiorari do issue to move into this Honourable Court and quash the proceedings and award of the Advisory Committee of the National Irrigation Board – Mwea Irrigation Settlement Scheme made on 13th July 2016 in respect of rice holding number 1824 Mwea Section .

2. That orders of prohibition and mandamus do issue against the Senior Scheme Manager of National Irrigation Board – Mwea Irrigation Settlement Scheme to stop execution or proceeding with execution of the said award made on 13th July 2016 relating to rice holding 1824 Mwea Section in favour of the interested party herein or any other person and such execution if any be declared null and void and the Senior Scheme Manager be compelled to restore the entire rice holding in the name of the exparte applicants herein as per the Court order given on 8th November 2005 vide Wanguru R.M. Misc. Succ. Cause number 22 of 2005 and also in compliance with the Irrigation (National Irrigation Scheme) Regulations made pursuant to Section 27 of the Irrigation Act Cap 347 laws of Kenya.

[2] The motion is grounded on the fact that the applicants are the legal owners of rice holding number 1824 Mwea Section. They allege that they acquired the said rice holding through a valid Court process in Wanguru R.M. Miscellaneous Succession number 22 of 2005 after succeeding their late father. It is argued that the Court order showing the rice holding is still valid and has never been set aside. The applicants argue that despite the existence of the said Court order, the Advisory Committee of the National Irrigation Board Mwea Irrigation Settlement Scheme deliberated on the said rice holding and went ahead to award part of the same to the Interested party who claimed to be the wife of the Exparte applicants' father. The said Interested party then went ahead to enter the said rice holding and is now cultivating the same thereby interfering with the ownership of the Exparte applicants and rendering the proceedings in Wanguru Succession Cause No. 22 of 2005 on 8th November 2005 null and void.

[3] The applicant therefore argues that the Advisory Committee of the National Irrigation Board Mwea Irrigation Settlement Scheme acted beyond its jurisdiction in view of the fact that, that issue had been determined by a competent Court of law. It is argued that the proceedings and award of the said Advisory Committee be moved into this Court and be quashed as the same was made without jurisdiction. Further, the said Senior Scheme Manager of National Irrigation Board – Mwea Settlement Scheme be prohibited from the execution or proceeding with execution thereof because the award of the said Advisory Committee was made in excess of jurisdiction and that the Scheme Manager be compelled to restore the entire rice holding in the name of Exparte applicants pursuant to the Court order given on 8th November 2005 in Wanguru R.M. Misc Succession Cause No. 22 of 2005 and also in compliance with Irrigation (National Irrigation Scheme) Regulations 1977 made pursuant to Section 27 of the Irrigation Act Cap 347 Laws of Kenya.

[4] In their submissions, the Exparte applicants told this Court that in accordance with the Irrigation Act (Cap 347) Laws of Kenya, the Scheme Manager In-charge is being notified that the licensee of the rice holding number 1824 had passed on, wrote to the Wanguru Resident Magistrate's Court to appoint a successor. The Court summoned the beneficiaries in Court and a consent order was recorded that the holding be shared equally between the applicants. The decision was communicated to the said General Manager who opened new cards after the holding was sub-divided into two equal shares. Further that in 2006, the interested party filed an application in the same Court seeking a review and stay of execution of the said consent orders of 11th November 2005 and she was advised to fresh suit as the matter was concluded. The Interested party did not file any new suit and or an appeal and instead she went to the Advisory Committee which convened a meeting on 13th July 2016 and purported to reverse the Court's decision. That that is what gave rise to this Judicial Review. The applicants states that it is not challenging the Advisory Committee's mandate given by the Irrigation Act but they are saying that the Committee acted ultra vires its power when it overturned the Court's decision. Further, it is argued that the issue is not whether the Interested party has a meritorious claim. But that the issue is whether the Advisory Committee has jurisdiction to deliberate on matters that have already been concluded by a Court of law.

The applicants submit that a decision of a competent Court of law cannot be subjected to proceedings before a Committee.

[5] The interested party in his brief submission argued that the applicants misinformed the Court that they were the only survivors and heirs of the Estate of their late father and that they proceeded to obtain consent and order that the Rice holding be sub-divided into two portions. Further, that the interested parties findings of the Advisory Committee was based on very sound facts.

[6] The respondents in its written submissions stated that the provisions of Section 8 (a) of Cap 347 are clear that it mandates the Advisory Committee to give a party a fair hearing and give that verdict accordingly.

They submitted that the award was fair as both parties were given an opportunity to express themselves and that the aforesaid acted in good faith and that the application is misplaced and an abuse of the Court process. They relied on Article 40 of the Constitution that every person has a right either individually or in association with others to acquire property.

[7] I have perused the Notice of Motion herein filed by way of Judicial Review. I have equally considered the submissions of the applicant and those of the respondent and interested parties herein and the authorities annexed herein. There is no dispute that rice holding number 1824 was held by the father of the applicants and the husband of the interested party. Equally there is no denying that the Estate of deceased father and husband in the said rice Holding 1824 in Mwea Irrigation Scheme aforesaid was subject to Wanguru Resident Magistrate Court Miscellaneous Succession Cause number 22 of 2005. A decision was rendered and notified to the General Manager of Mwea Irrigation Scheme. It is not disputed that the interested party tried to review that order and asked for a stay of execution. She was not successful. It is conceded by both parties that when the interested party resulted to the Advisory Committee of Mwea Irrigation Scheme which convened a meeting on 13th July 2016 and made a decision that overturned the order of a competent Court of law.

The applicant argues that the Advisory Committee lacked jurisdiction to do so and that its action was null and void and was ultra vires the orders of a competent Court of law.

The respondent argues it had power to do so under the Irrigation Act and that the decision of the Advisory Committee was fair and that they are entitled to right to land under Article 40 of the Kenya Constitution 2010. The interested party argues the action of the Advisory Committee was merited since the exparte applicants misinformed the Court that they were the only survivors and heirs of their late father.

[8] With profound respect to the respondent and the interested party, that is not the issue here. The issue is whether the Advisory Committee acted ultra vires its powers when it overruled a valid order of a competent Court of law. Secondly, whether it had jurisdiction to do so. These are the issues. It is not whether the interested party's claim is merited or whether doing so is fair or whether the interested party is entitled to own property under Article 40 of the Constitution of Kenya.

There is no doubt that the Advisory Committee of the Mwea Irrigation Scheme acted without jurisdiction in trying to set aside and overrule an order of a competent Court of law. It had no jurisdiction to do so. Its actions were a nullity and void ab initio. The applicants' application is merited and it is allowed as prayed in paragraphs (1) (2) and (3) of the same.

It is so ordered.

S.N. MUKUNYA

JUDGE

20TH JULY, 2018