



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC JUDICIAL REVIEW APPLICATION CASE NO. 02 OF 2018

REPUBLIC.....APPLICANT

VERSUS

MINISTER OF LANDS, HOUSING,

PHYSICAL PLANNING & SETTLEMENT.....1ST RESPONDENT

DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER

MERU SOUTH/MAARA SUB COUNTY.....2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....3RD RESPONDENT

MUTUA MUGAMBI AREWA.....INTERESTED PARTY

WERU TEA FACTORY COMPANY LIMITED...2ND INTERESTED PARTY

GILBERT MUCHIRI NGAINE.....EX-PARTE APPLICANT

RULING

1. This application is dated **2nd August, 2018** and seeks orders:

1. That this application be certified urgent and service of the same be dispensed with in the first instance.

2. That pending the interpartes hearing and determination of the instant application the court be pleased to order stay of implementation of the findings, ruling and judgment of Abraham Kemboi the deputy county commissioner Maara sub county delivered on 16th November, 2017 for and on behalf of the minister of lands, housing, physical planning and settlement in appeal No. 451/2017 in respect of land parcel 3961 Lower East Magutuni Adjudication section a subdivision of parcel No. 2266 Lower East Magutuni Adjudication Section.

3. That pending the hearing and determination of the instant judicial review the court be pleased to order stay of implementation of the findings, ruling and judgment of Abraham Kemboi the deputy county commissioner Maara sub county delivered on 16th November, 2017 for and on behalf of the minister of lands, housing, physical planning and settlement in appeal No. 451/2017 in respect of land parcel 3961 Lower East Magutuni Adjudication section a subdivision of 2266 Lower East Magutuni Adjudication section.

4. That these orders be served upon the district land adjudication section.

5. Costs of this application be provided for.

2. The application is supported by the affidavit of Gilbert Muchiri Ngaine the applicant and has the following grounds:

a. That this judicial review is in reference to the minister's decision delivered on 16th November, 2017 in appeal No. 451 of 2017.

b. That this judicial review is in reference to land parcel No. 3961 Lower East Magutuni adjudication section.

c. That this suit is pending and the matter is slated for mention on 19th September, 2018.

d. That in the meanwhile the director of land adjudication and settlement by a letter dated 23rd July, 2018 has directed the county surveyor Machakos County to liaise with the adjudication officer Maara Sub County and implement the minister's decision (D.C.C Maara Sub County).

e. That seemingly the directives of the director of land adjudication and settlement are on a collision course of these proceedings of judicial review and an affront to the court's integrity.

f. That if the implementation directed by the director of land adjudication is put in place the instant judicial review will be rendered nugatory.

g. That it is fair and just that orders of stay of the implementation of the minister's finding ruling and judgment be stayed in that this particular judicial review is challenging that particular decision by the D.C.C. Maara Sub County.

h. That this application is urgent in that it has come to the notice of the applicant that the very findings, ruling and judgment that the applicant is challenging in a court of law is about to be implemented.

i. That no party stands to suffer any prejudice in the event the orders sought are granted after all the judicial review is about to be determined.

3. During interpartes hearing on 19th September, 2018, it transpired that the application was not opposed.

4. In the circumstances, the application is allowed.

5. Costs shall be in the cause.

6. It is so ordered.

Delivered in open court at Chuka this 19th day of September, 2018 in the presence of:

CA: Ndegwa

I.C. Mugo for the Exparte Applicant

Mark Muriithi for the 1st Interested Party

Mutani for the 2nd Interested Party

P. M. NJORGE

JUDGE