



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT**

**AT MERU**

**JUDICIAL REVIEW CASE NO. 34 OF 2012**

**FREDRICK KARETHI.....APPLICANT**

**VERSUS**

**THE LAND ADJUDICATION AND SETTLEMENT OFFICER.....RESPONDENT**

**MARGARET MUGOMUKAA.....INTERESTED PARTY**

**JUDGMENT**

**BACKGROUND**

These Judicial Review proceedings were initially commenced by way of chamber summons pursuant to Order LIII Rule 1 (1) (2) (3) & (4) CPR as read with Section 8 & 9 of the Law Reform Act Cap 26 Laws of Kenya. In that initial application, the Applicant had sought leave to apply for an order of certiorari to call upon and bring to this Honourable Court for purposes of quashing the proceedings and decision of the Land Adjudication and Settlement Officer Tigania East District made on 11/10/2012 in objection case No. 277 of 2012 involving Land Parcel No. 350 and 1183 ANKAMIA ADJUDICATION SECTION. That application was filed under Certificate of Urgency and upon placing before the duty court who upon perusal and consideration of the materials contained therein certified the same urgent and granted leave to the Exparte Applicant to file and serve the substantive motion within 21 days. The Court also ordered the leave so granted to operate as a stay of further proceedings or implementation of the Land Adjudication and Settlement Officer regarding land Parcel No. 350 and 1183 ANKAMIA ADJUDICATION SECTION.

On 27<sup>th</sup> November, 2012 the Applicant filed and served the substantive motion as directed by the court.

**APPLICANT'S CASE**

The Applicant in his affidavit verifying the facts in support of this Motion stated that he is the owner of land Parcel No. 350 ANKAMIA LAND ADJUDICATION SECTION. The Applicant also contends that he has just learnt from his father M' Machoki M'Lintari Muriri an objection No. 277 of 2012 was heard and decided by the Respondent on 11/10/2012 whereby he awarded part of his land to the Interested Party. It is the Applicants contention that he was not a party to objection No. 277 of 2012 in respect plot No. 1183 yet the Interested Party is seeking to implement on the ground where his parcel of land No. 350 ANKAMIA ADJUDICATION SECTION is situate.

**RESPONDENT'S CASE**

The respondent through one SAMSON ASANDE NYASANI who was the Divisional Land Adjudication Officer Tigania East/Central Division stated that parcel No. 1183 & 350 objection No. 277 was heard on 18/9/2012 by a Gazetted and Competent Land Adjudication Officer under Cap. 283 Laws of Kenya. He alleged that both parties appeared before the Land Adjudication Officer on the hearing date sitting with the elected Land Committee members.

The deponent further stated that after hearing and investigating from the witnesses, he considered the evidence adduced by the objector and awarded the son where they have planted tea and built the developments from parcel No. 1183.

**INTERESTED PARTY'S CASE**

The Interested Party in her replying affidavit sworn on 22<sup>nd</sup> September, 2015 confirmed having filed the objection in respect of this Judicial Review No. 277 against the Applicant herein. She further stated that on 11/10/2012 the Land Adjudication and Settlement Officer together with the committee who heard the objection ruled that Land Parcel No. 1183 ANKAMIA LAND ADJUDICATION SECTION should be divided equally between her and the Applicant.

## **DECISION**

I have carefully considered the material placed before me both in support and opposition to these objection proceedings. I have also perused the objection proceedings before the Respondent and decision arrived at which is the subject of this Judicial Review. I have also considered the applicable law and the submissions by counsels appearing for the parties. It is apparent from the objection proceedings that the Interested Party Margaret Mukomugaa filed objection No. 277 in respect of Land Parcel No. 1183 ANKAMIA ADJUDICATION SECTION. That parcel of land is registered in favour of M'Machoki M'Lintari. The Applicant in his affidavit verifying the facts in support of this Judicial Review proceedings stated his land parcel No. 350 ANKAMIA LAND ADJUDICATION SECTION was not a subject of that objection No. 277. He has even attached a copy of his registration book from the Lands Office marked FK1. Those averments given under oath have not been controverted by either the Respondent or the Interested Party.

I have also noted from the objection proceedings that the Applicant was not invited as a party to the hearing of that objection. It is therefore wrong for the Respondent or anybody acting under his instructions to purport to implement a decision affecting the Applicant's rights or interest over Land Parcel No. 350 ANKAMIA ADJUDICATION SECTION without being given a fair hearing. I have also noted that the purported objection proceedings held on 11/10/2012 files against the provisions of Section 18 of the Land Consolidation Act Cap 283 which is the applicable law. That Section reads as follows:

### **"18 Procedure with regard to objections**

**1. The Executive Officer, with whom an objection is lodged in accordance with the provisions of Section 17 of this Act, shall either;**

**a. Refer the objection to the committee, if it appears to him that the inaccuracy or incompleteness alleged is a consequence of any decision of the committee.....**

**2. Any objection referred to a committee under Sub-section (1) of this Section shall be considered by the committee and the committee shall make a finding thereon; every such finding shall be submitted to the Adjudication Officer....."**

The copy of objection proceedings and decision held on 11/10/2012 does not reflect the committee members and their names. Proceedings and decision of an objection raised contrary to the applicable law is null and void and call for this courts power to quash the same. In the final result, the Notice of Motion dated 20<sup>th</sup> November, 2012 is allowed in the following terms;

**1. The proceedings and decision of the Respondent made on 11<sup>th</sup> October, 2012 in objection Case No. 277 of 2012 involving Land Parcel No. 350 and 1183 ANKAMIA ADJUDICATION SECTION be and are hereby quashed.**

**2. The Respondent to bear the costs of this application.**

**DATED AND SIGNED IN THIS 18<sup>TH</sup> DAY OF OCTOBER, 2018.**

**E. C. CHERONO**

**ELC JUDGE - KERUGOYA**

**DELIVERED IN OPEN COURT AT MERU THIS 31<sup>ST</sup> DAY OF OCTOBER, 2018**

**LUCY N. MBUGUA**

**ELC JUDGE - MERU**

**In the presence of:**

C/A: Janet/Galgalo

Materi H/B for Kiogora for exparte applicant

C. Mbaabu H/B for Mburugu for Interested party