



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MERU

J.R NO. 18 OF 2012

MIKINDURI-MIREGA CHILDREN

OF HOPE INITIATIVE.....EX-PARTE APPLICANT

VERSUS

LAND ADJUDICATION OFFICER, ANTUAMBURI

ADJUDICATION SECTION.....1ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT

MIKINDURI HOPE COMMUNITY

DEVELOPMENT ORGANISATION.....INTERESTED PARTY

JUDGEMENT

BACKGROUND

This Judicial Review commenced by way of a Chamber Summons under Order 53 Rule 1 CPR as read with Section 8 &9 of the Law Reform Act Cap. 26 Laws of Kenya. The Exparte Applicant sought leave to apply for an order of certiorari to bring into this Honourable Court for purposes of quashing the decision of the Land Adjudication Officer issued on 15/12/2011 in Objection No. 3192 and 3193 in respect of Land Parcel No. 2311 and 8046 both situate in Antuamburi Adjudication Section. The Exparte Applicant also sought to have the leave if granted to operate as a stay of implementation of the impugned decision issued on the said 15/12/2011. That application was filed under Certificate of Urgency which necessitated the file to be placed before the duty court. Upon consideration of the materials contained in that application, the duty court granted the Exparte Applicant leave to file a substantive motion for orders of certiorari. The court also granted the order that the leave so granted shall operate as a stay of implementation of the decision by the Adjudication Officer issued on the said 15/12/2011. On 15/6/2012, the Exparte Applicant filed the substantive motion.

EXPARTE APPLICANT'S CASE

According to the Exparte Applicant, the 1st Respondent usurped the powers of the Land Committee in hearing the said objections. The Exparte Applicant contends that the 1st Respondent contravened Section 9 and 26 of the Land Consolidation Act Cap. 283 Laws of Kenya to the extent that he heard the objection Nos. 3192 and 3193 alone without the aid of a properly constituted committee of not less than 25 members, selected from members of the public ordinarily resident in the adjudication section where the suit lands are situate.

The Exparte Applicant also alleged that the 1st Respondent acted contrary to Section 11 of the Land Consolidation Act Cap. 283 in determining the said objections in total disregard of the Meru customs, norms and practices as by-law ordained. The Exparte Applicant further argued that the 1st Respondent denied her a chance to call its 3 witnesses who were present at the time of the hearing.

RESPONDENT'S CASE

The Respondents did not file any replying affidavit or grounds in opposition to this Judicial Review application.

INTERESTED PARTY'S CASE

The Interested Party filed a replying affidavit in which she denied the Exparte Applicant's contention that her three (3) witnesses were denied

a chance to testify during the hearing of the Objection Nos. 3192 and 3193.

She further deposed that the proceedings of the objection reflects that one Bishop Joseph Karugu who is the Chairman of the Exparte Applicant was the only witness who gave evidence for and on behalf of the Applicant and that there were no indication of calling of any other witness(es).

The deponent also stated that there is no record in the objection proceedings showing that other than Mr. Joseph Karugu, there were any other officials or witnesses of the Exparte Applicant who were sitting in court and wanted to give evidence before the committee. The deponent further stated that there is no record in the objection proceedings that the 1st Respondent turned down any request by any person to give evidence before the committee. The Exparte Applicant attached a certified copy of the objection proceedings and the decision of the committee issued on 15/12/2011.

DECISION

I have examined all the averments of the parties. I have also considered their submissions. I have looked at the operative law. The Applicant's application is based on three grounds. First he challenged the impugned decision by the 1st Respondent for contravening Section 9 and 26 of the Land Consolidation Act Cap. 283 Laws of Kenya. The Applicant's contention is that the 1st Respondent heard the Objections Nos. 3192 and 3193 alone without the aid of a properly constituted committee of not less than 25 members, selected from members of the public ordinarily resident in the adjudication section.

The two sections of the statute are reproduced as follows:

“9 (1) The Adjudication Officer shall be in charge of and shall exercise general supervision and control over adjudication.

(2) The Adjudication Officer shall hear and determine;

(a) Any objection to the adjudication register which is submitted in accordance with Section 26 of the Act.

(b) Any objection in the adjudication register which is submitted in accordance with Section 26 of the Act.

26 (1) Any person named in or affected by the Adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the Adjudication Officer in writing, saying in what respect he considers the adjudication register as incorrect or incomplete.”

Having perused all the certified copies of the objection proceedings and the impugned decision issued on 15/12/2011, it is my finding that there was no request by any person to give evidence before the committee. The Exparte Applicant has attached a certified copy of the objection proceedings and the impugned decision of the committee issued on 15/12/2011.

I have examined all the averments of the parties. I have also considered their submissions and the applicable law. The applicable law can be seen from the first page of the proceedings showing that Tigania District, Atuamburi Adjudication Section where the suit land is situate is governed under the Land Consolidation Act Chapter 283 Laws of Kenya. It therefore follows that where an objection has been raised, the provision of Section 9 of the Land Consolidation Act Cap. 283 must be followed. That Section reads as follows:

“9 (1) The Adjudication Officer within whose District or adjudication section is situate shall appoint a committee for each adjudication section from amongst persons resident in the adjudication section and each committee shall consist of not less than twenty five members.

(2) The Adjudication Officer shall appoint an Executive Officer for each committee.....”.

The Applicant has challenged the impugned decision for want of jurisdiction saying that the committee did not constitute the minimum number required under the law. I agree with the Applicant that the impugned decision is null and void for failure to meet the requirements of Section 9 of the Land Consolidation Act Cap. 283 Laws of Kenya. For that reason alone, the Notice of Motion dated, 15th June, 2012 succeeds. Consequently the following orders are hereby issued:-

1. THAT an order of certiorari be and is hereby issued, calling and bringing into this Honourable Court for purposes of quashing the decision of the 1st Respondent dated 15/12/2011 in Objection No. 3192 and 3193 in respect of Land Parcel Nos. 2311 and 8046 both situated in Atuamburi Adjudication Section.

2. The objections are remitted back to the Adjudication Officer Atuamburi Adjudication Section to constitute a proper committee for purposes of hearing the objection in accordance with the law.

3. The Respondent to bear the costs of this case.

DATED AND SIGNED THIS 18TH DAY OF OCTOBER, 2018.

E. C. CHERONO

ELC JUDGE - KERUGOYA

DELIVERED IN OPEN COURT AT MERU THIS 31ST DAY OF OCTOBER, 2018

LUCY N. MBUGUA

ELC JUDGE - MERU

In the presence of:

A.G for respondent

Muthamia H/B for Ndubi

Joseph Karugu Ngurutu an official for exparte applicant

Stephen Kungutia an official for exparte applicant

C/A: Janet/Galgalo