



REPUBLIC OF KENYA

IN THE ENVIRONMENT LAND COURT AT KERUGOYA

JUDICIAL REVIEW MISC. 1 OF 2018

IN THE MATTER OF APPLIATION FOR ORDERS OF JUDICIAL REVIEW BY JOSEPH MUTAHI KARUIRU, PETER KIBUCHI KARUIRU AND ROBERT GAKURU KARUIRU

AND

IN THE MATTER OF IRRIGATION ACT CAP 347 LAWS OF KENYA

AND

IN THE MATTER OF RICE HOLDING NUMBER 2423 AND VILLAGE PLOT NO. 2423 UNIT H3 THIBA SECTION OF THE NATIONAL IRRIGATION BOARD–MWEA IRRIGATION SETTLEMENT SCHEME

AND

IN THE MATTER OF SCHEME MANAGER MWEA IRRIGATION SETTLEMENT SCHEME LETTER DATED 31.9.2017 BETWEEN

REPUBLIC OF KENYA.....APPLICANT

VERSUS

NATIONAL IRRIGATION BOARD MWEA IRRIGATION

SETTLEMENT SCHEME.....1ST RESPONDENT

JOHANA MURIMI KARUIRU.....2ND RESPONDENT

AND

JOSEPH MUTAHI KARUIRU.....1ST EXPARTE/APPLICANT

PETER KIBUCHI KARUIRU.....2ND EXPARTE/APPLICANT

ROBERT GAKURU KARUIRU.....3RD EXPARTE/APPLICANT

RULING

BACKGROUND

The Three Ex-parte Applicants herein filed the chamber application dated 9th March 2018 under ***Order 53 Rules 3 Civil Procedure Rules*** seeking leave to apply for orders of certiorari to bring into this Honourable Court for purposes of quashing the proceedings and award of the scheme manager Mwea Irrigation Settlement Scheme letter dated 31.09.2017 in respect of rice holding No. 2423 and Village Plot No. 2423. The Ex-parte Applicant also sought an order that the grant of leave do operate as a stay of any proceedings and order against the scheme manager of National Irrigation Board – Mwea Irrigation Settlement Scheme to stop the execution of proceedings with execution of this letter dated 9.9.2017 relating to rice holding No. 2423 Unit H 3 Thiba Section and Plot No. 2423 in favour of the Ex-parte/Applicants herein.

The application is premised on 13 grounds shown on the face of the said application, a supporting affidavit sworn by Joseph Mutahi Karuiru, statement of facts and affidavit verifying the correctness of the facts. The application was opposed by the 2nd Respondent who filed what he

called 2nd Respondents statement of Defence and Preliminary Objection and a replying affidavit sworn and filed on 10th April 2018.

In the replying affidavit the 2nd Respondent annexed numerous certified court records including a letter dated 22nd March, 1974 written by the then District Magistrate Mwea Hon. M.L. Rutere addressed to the manager Mwea Irrigation Scheme. The second documents are Court proceedings held on 14th March 1974 in Succession Cause No. 10 of 1974. Also annexed is a letter to the Manager Mwea irrigation Settlement one S.N, Kanai to the District Magistrate Mwea District Court dated 28th January 1974.

The other annexure are Minutes of Main Advisory meeting of the National Irrigation Board of Mwea Irrigation Settlement Scheme held on 5th October 2016. The next document annexed to the replying affidavit is a letter regarding Farmers Changes Holding No. 2423 in which Mwea Irrigation Settlement gave notice to the effect that pursuant to Advisory of 5th October 2016, the District Magistrate Court finalized the case regarding the Ex-parte Millicent Wangithi Karuiru by appointing Johana Murimi Karuiru as the rightful successor of the holding No. 2423 with effect from 5.10.2016. The 4th annexure is a letter by the Innocent A. Ariemba, the scheme manager dated 31st September 2017 addressed to Johanna Murimi Karuiru, Joseph Mutahi Karuiru, Peter Kibuchi Karuiru, Robert Gakuru, Lydia Wangui, Mercy Wambui and Magdalene Wanjiru. The other annexure is a notice of withdrawal of case No. 178/2017 at Wang'uru Law Courts by Joseph Mutahi Karuiru. The final annexures are Court proceedings in SPMCC No. 178/2017.

I have considered the Ex-parte Chamber Summons, the relief sought and the grounds on which it is sought together with the statements of facts and the affidavits verifying those facts. I have also perused the statement of defence and the replying affidavit together with the annexures thereto. The Ex-parte Applicant herein is seeking leave of this Court to apply for an order of certiorari to bring into this Honourable Court for purposes of being quashed the proceedings and award of the scheme manager Mwea irrigation Settlement Scheme letter dated 31.9.2017 in respect of rice holdings No. 2423 and Village Plot No. 2423.

Having considered the entirety of materials placed before me, I allow the application on the following terms:-

(1). The Ex-parte Applicant be and is hereby granted leave to apply for an order of certiorari to remove into this Honourable Court for purposes of being quashed the proceedings and award by the scheme manager Mwea Irrigation Settlement Scheme letter dated 31.9.2017 within 21 days from today.

(2). The costs of this application to abide the event.

READ and DELIVERED in open Court at Kerugoya this 31st day of October, 2018.

E.C. CHERONO

E.L.C JUDGE

31ST, OCTOBER, 2018

In the presence of:

1st Ex-parte Applicant

2nd Ex-parte Applicant

3rd Ex-parte Applicant

1st Respondent - present