



REPUBLIC OF KENYA

IN THE

ENVIRONMENT AND LAND COURT AT MERU

JR. NO. 18 OF 2014

JOSHUA MURUYU M'IKIARA.....EXPARTE APPLICANT

VERSUS

THE LAND ADJUDICATION OFFICER, IGEMBE NORTH AND

SOUTH DISTRICT.....1ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT

JUDGEMENT

INTRODUCTION

The Applicant was granted leave to institute these judicial proceedings pursuant to leave of the court issued on 07th July, 2014. The Applicant had commenced these proceedings by way of a chamber summons under Order 53 Rule 1, 2, and 4 CPR as read with Sections 8 and 9 of the Law Reform Act Cap. 26 Laws of Kenya.

In his application for leave dated 4th July, 2014, the Applicant was seeking leave to commence these proceedings for an order of certiorari to bring into this Honourable court for purposes of quashing the proceedings, findings and decision of the 1st Respondent dated 27th June, 2014 in objection No. 606 in respect of Land Parcel No. 173 situate in Akirangondu "B" Adjudication section.

The grounds of the application is that the impugned decision is illegal as the objection was heard in his absence as he has been seriously sick. The Applicant also challenges the impugned decision on grounds that the same is unlawful, abinitio in that the objection was heard without the aid of a committee as required in law. The Applicant further contends that the manner in which the objection was determined by the 1st Respondent is improper, irregular and unprocedural.

In the replying affidavit sworn on 4th September, 2014 the Interested Party stated that the Applicant is not candid in that he was present with his witnesses during the hearing of the objection. He also stated that the Applicant was represented by his brother on John Kibwi M'Ikiara. The Interested Party contends that the committee was properly constituted. The Interested Party also argued that the Applicant filed another JR Case No. 90 of 2011.

APPLICANT'S SUBMISSIONS

The Applicant submitted that the Respondents who made the impugned decision have not filed grounds of opposition or a replying affidavit. He also argued that the 1st Respondent colluded with the Interested Party and condemned the Exparte Applicant unheard. The Applicant also stated that the proceedings and the impugned decision do not indicate the date of the hearing and/or the names of any Committee Members who participated in the hearing as required in law. It is also stated by the Applicant that there is no indication of the application of the African Customary Law in the purported hearing of the said objection as required under Section 11 of the Land Consolidation Act Cap. 283 Laws of Kenya.

The Applicant cited the following cases:

- 1. Catherine Muthoni Kiriungi & Another –Vs- the Chairman, Land Adjudication & Settlement Officer & 3 Others CA No.**

21 of 2016 (unreport) Meru.

2. Peter Kimandiu –Vs- Land Adjudication Officer, Tigania East District & 4 Others CA NO. 28 of 2015 (Nyeri).

SUBMISSIONS BY RESPONDENTS

The Respondents did not file written submissions.

SUBMISSIONS BY THE INTERESTED PARTY

The Interested Party did not also file any submissions.

DECISION

These Judicial Review proceeding is challenging the impugned decision and the proceedings of the 1st Respondent dated 27/06/2014. In Objection No. 606 in respect of Land parcel No. 173 situate in Akirang' Ondu "B" Adjudication Section. From the copy of the proceedings and the decision being challenged, the record indicates the Interested Party as the Defendant and his ID card also indicated as 10717508. His witness is indicated as Jacob Kirengo. The coram is given as the objector, the Defendant and their witnesses were present. There is no indication that there were any committee members present during the hearing of the objection. As the hearing progressed, the Defendant/Interested Party's witness was sworn in and stated that his brother who is the Interested Party herein was bed ridden and suffering from stroke. From that statement given by the Defendant's/Interested Party's witness in the objection proceeding, it is apparent that the Interested Party did not participate in the hearing and determination of an interest in land that would adversely affect his right in such a property. Failing to notify the Applicant of an objection filed and findings of a property whose outcome would affect him was tantamount to condemning a person without a hearing which is a cardinal principle of natural justice. In the case of **Catherine Muthoni Kiriungi & Another –Vs- The Chairman, Land Adjudication & Settlement Officers & 3 Others CA No. 21 of 2016 (Nyeri) (Unreported)**, the court held thus;

“ In the first place, under Section 12 of the Act, the Committee or the Arbitration Board must give notice, or warning to the effect that it intends to carry out arbitration in respect of particular parcels of land. To our mind, although the Section says “warning” it must mean notice. This would mean that the Interested Parties are notified of the arbitration date and venue before hand.....

In this case, the appellants say they were not notified of the arbitration proceedings which was contrary to Section 12 of the Act.....The procedure was therefore fronted, and this caused immeasurable prejudice to the Appellants who were in physical occupation of the land in question.....From this analysis, it becomes clear that the Appellants' right to be heard before they could be divested of ownership of the said property was denied them. This was against the rules of natural justice which is of the cardinal fundamental rights that are inherent in every human being”

The Applicant has also challenged the impugned decision on grounds that it was made unprocedurally and without jurisdiction by usurping the powers of Akirang' Ondu "B" Adjudication Section's Committee. A cursory perusal of the proceedings and the impugned decision shows that there were no attendance by the committee members. There are no names of any committee members present.

On cross-examination, it reflects that a question was put to the witnesses by a committee member whose name is not given. Section 9 (1) of the Land Consolidation Act Cap. 283 requires that an Adjudication Register (A/R) objection must be heard by a committee comprising at least twenty five (25) members. Section 11 (2) requires the said committee to apply customary law in the hearing and determination of such objection. In light of the aforesaid procedural improprieties, I have no doubt in my mind that the proceeding and the impugned decision of the 1st Respondent cannot stand the procedural requirements of the Land Consolidation Act Cap. 283 Laws of Kenya.

In the case of **Peter kimandiu –Vs- Land Adjudication Officer, Tigania East District & 4 Others**, the learned Judges deciding a similar case as before me stated as follows:

“...The Adjudication Officer within who district an 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 (25) members.....We say the committee is a crucial organ because it is the one which has the mandate under Section 11 to adjudicate upon and determine in accordance with African Customary Law.....From the foregoing examination of the scheme of the Act, it is manifestly evident that the centrality of the committee is maintained throughout and it is mandatory for the Land Adjudication Officer to sit with the committee even after the completion of the adjudication register.....Having found, as we have, that the dispute in this matter was governed by the L.C.A and that the Land Adjudication Officer was required to determine the dispute submitted to him in conjunction with the committee, and there being no dispute that the Land Adjudication Officer in this matter made the decision on his own, it follows that the decision making process was contrary to the law and thus amenable to the corrective powers of the High Court. A determination of that issue is sufficient to dispose of this appeal and we did not examine the propriety of the decision made by the Land Adjudication Officer.

The upshot is that this appeal has merits and is allowed. We set aside the decision of the High Court made on 21st November, 2014 and substitute therefore an order granting the order of certiorari to issue forthwith to bring the High Court for quashing the decision of the Land Adjudication Officer, Tigania made on 22nd January, 2010 in respect of.....”

The facts and the law obtained in that case are in all fours with the instant case. In the result, I find the Notice of Motion dated 17/07/2018

merited and the same is hereby allowed in the following terms:

1. That an order of certiorari be and is hereby issued calling and bringing into this Honourable Court and quashing the proceedings, findings and decision of the 1st Respondent dated 17/07/2014 in objection No. 606 in respect of Land parcel No. 173 situate in Akirang'ondū "B" Adjudication Section.

2. That the costs of this application and the chamber summons to be borne by the Respondent and the Interested Party jointly and severally.

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:

C.P Mbaabu for exparte applicant

Muthamia H/B for Mbogo for Interested party

C/A: Janet/Galgalo