



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. JUDICIAL REVIEW APPLN. NO. 69 OF 2017

KISING’U KINYILI.....APPLICANT

VERSUS

THE MINISTRY OF LANDS AND PHYSICAL PLANNING.....RESPONDENT

AND

GERALD MUSANGIINTERESTED PARTY

RULING

1. In the Notice of Motion dated 31st October, 2017, the ex-parte Applicant is seeking for the following reliefs:

- a. That a stay of execution be granted to stop the Respondent herein who is moving to implement the Minister’s decision.**
- b. That an order of certiorari do issue quashing the decision of the Respondent, the Ministry of Lands and Physical Planning, granting ownership of Plot Number Machakos/Katangi/866 to the Interested Party herein.**
- c. That this Honourable Court do declare that plot number Machakos/Katangi/866 belongs to the Applicant herein, Kising’u Kinyili.**
- d. That the cost of this Application be awarded to the Applicant.**

2. In his Statutory Statement, the ex-parte Applicant (*the Applicant*) averred that parcel of land known as Machakos/Katangi/866 (*the suit land*) was acquired by his father in 1952; that he settled on the said land with his family and that when his father died in the year 1960, he was buried on the suit land.

3. The Applicant averred that in the year 1982, the suit land was allocated parcel number 886; that it was then registered in his name and that in 1985, Mailu Nzinzi lodged a dispute before the Land Adjudication Committee; that the Committee decided the issue in his favour and that on Appeal, the Land Arbitration Board agreed with the decision of the Committee.

4. The Applicant deponed that when Gerald Musangi filed an Appeal to the Minister of Lands, the Minister allowed the Appeal without any evidence and that the said decision of the Minister should be quashed by this court.

5. In response, the Interested Party deponed that Judicial Review proceedings are concerned with the process leading to the impugned decision; that the Minister’s decision is final and that the Application should be dismissed.

6. In his submissions, the Applicant’s advocate submitted that the Applicant was not given a fair hearing by the Minister; that the Applicant was not allowed to call his witnesses and that the Minister overstepped his mandate by making a decision which deprives the Applicant of his property.

7. The Applicant’s advocate finally submitted that the action by the Minister amounts to revocation of his title; that it is only the court that can cancel or amend a title to land and that the Minister’s decision is not only illegal but also in contravention with the Applicant’s constitutional right and *ultra vires*.

8. The Interested Party’s advocate submitted that these proceedings are a kin to an Appeal and therefore not tenable; that the Applicant wants this court to engage in a merit review of the proceedings before the Minister and that the Application should be dismissed.

9. The evidence before this court shows that when the Respondent filed Appeal Case No. 368 of 1996 before the Minister, the Minister's representative heard both the Applicant and the Interested Party herein. Neither the Applicant nor the Interested Parties called witnesses during the proceedings before the Minister. After hearing the two, the Minister's representative found that the disputed land is not parcel number 866 and that parcel number 866 is well demarcated while the parcel of land in dispute was bushy. The Minister found as a fact that the Respondent did purchase the suit land.

10. It is trite that Judicial Review is concerned with the decision making process, not with the merits of the decision itself. As was held in the case of ***Municipal Council of Mombasa vs Republic, ex-parte Umoja Consultants Limited, Civil Appeal No. 185 of 2001***, in Judicial Review, the court is only concerned with such issues as to whether the persons affected by the decision was heard before the decision was made and whether in making the decision the maker took into account relevant matters or irrelevant matters.

11. A Judicial Review Court is not supposed to act as a Court of Appeal over the decision which would involve going into the merits of the decision itself such as whether there was or there was no sufficient evidence to support the decision.

12. The Applicant in this matter is aggrieved by the decision of the Minister because he overturned the decisions of the Adjudication Committee and the Arbitration Board which were made in his favour. That, in my view, is a complaint that does not fall within the ambit of Judicial Review. Indeed, the proceedings of the Minister show that both the Applicant and the Interested Party were heard by the Minister's representative. There is no evidence before me to show that the Minister considered irrelevant matters while arriving at his decision or that he acted *ultra vires*. Having determined the matter based on the evidence before him, this court cannot fault that decision just because he overturned the decisions of the Adjudication Committee and the Arbitration Board.

13. For those reasons, the Notice of Motion dated 31st October, 2017 is dismissed with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 26TH DAY OF OCTOBER, 2018.

O.A. ANGOTE

JUDGE