



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT EMRU**

**JUDICIAL REVIEW NO. 1 OF 2017**

**IN THE MATTER OF AN APPLICATION BY DAVID MWONGELA M'MUGWIKI TO APPLY FOR JUDICIAL REVIEW  
ORDER OF CERTIORARI**

**AND**

**IN THE MATTER OF SECTION 8 & 9 OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA**

**AND**

**IN THE MATTER OF LAND PARCELS NO. 7484 KARAMA ADJUDICATION SECTION**

**AND**

**IN THE MATTER OF SECTION 26 OF THE LAND CONSOLIDATION ACT CAP 283 LAWS OF KENYA**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**LAND ADJUDICATION & SETTLEMENT**

**OFFICER TIGANIA EAST ..... RESPONDENT**

**KATHIO M' IGWETA ..... INTERESTED PARTY**

**JUDGMENT**

**INTRODUCTION**

These Judicial Review proceedings as is usually the practice was first commenced by an ex parte application chamber summons application dated 12<sup>th</sup> January 2017 filed on 13<sup>th</sup> January 2017 under certificate of urgency. When application was placed before the duty court, the same was certified urgent to be heard on priority basis.

The ex parte applicant was also granted leave to apply for an order of certiorari to quash the impugned decision of the land adjudication and settlement officer Tigania East District made on 22<sup>nd</sup> November 2016 in objection no. 19 involving land reference no. 7484 Karama adjudication section. The court also ordered the leave so granted do operate as stay of further proceedings of the implementation of the decision of the land adjudication and settlement officer. On February 2017 the applicant filed the substantive motion dated 7<sup>th</sup> February 2017.

On 17/7/2018, this matter came up for direction where the parties agreed to dispose this Judicial Review by affidavit evidence and written submissions. The court also gave timelines within which the parties were to file those submissions.

**APPLICANT'S WRITTEN SUBMISSIONS**

The applicant through the firm of Maitai Rimita & Co. Advocates submitted that the respondent failed to appoint/constitute a committee to hear and decide the objection. The applicant further submitted that by purporting to determine the objection without a properly constituted

committee the respondent acted ultra vires thus rendering her decision null and void abinitio. The applicant cited the following cases and sections of the framework statute law support thereto:

- 1. Section 9, 11 and 26 of the land consolidation Act cap 283 laws of Kenya.**
- 2. Council of civil servants union vs Minister or the civil service (985) AC 2**
- 3. Rex vs Electricity Commissioners Expert London Electricity Joint Committee co. (1920)**
- 4. Misc. Application no. 235 of 2006 (Meru) Leonard Kamenchu Kairiama vs Land adjudication officer and another (unreported)**
- 5. Peter Kimandiu vs Land adjudication officer Tigania West District & 4 others CA No. 28 of 2015 (Nyeri) (Unreported)**

#### **INTERESTED PARTY'S SUBMISSIONS**

The interested party through the firm of Mbaabu M'Inoti & Co. Advocates submitted that the decision reached by the respondent was unbiased as no evidence has been tendered by the applicant. The interested party also submitted that section 26 of the land consolidation act cap 283 laws of Kenya does not stipulate that a specific number of the committee should sign or record their names in the objection proceedings.

The interested party cited the following authorities:

- 1. Municipal Council Of Mombasa Vs. Republic & Umoja Consultants LTD CA No. 185 Of 2001**
- 2. Republic Vs Kenya Revenue Authority Exparte Yaya Towers Ltd. (2003) eKLR**
- 3. The Commissioner Of Lands Vs Kunste Ltd. CA. No. 234 of 1995 (1997) eKLR**
- 4. Easter Produce (K) Ltd Versus James Kipketer Ng'etich (2005) eKLR**

#### **RESPONDENT'S SUBMISSIONS**

Despite being notified of this matter and appearing in court on 17.7.2018 for directions, the respondent failed and/or refused to file any response or submissions in this case either in support or in opposition of the application.

#### **ANALYSIS AND DECISION**

It is trite law that judicial review is concerned with decision making process and not the merits of the decision itself. In the instant case the exparte applicant has attached copies of the proceedings and impugned decision of the respondent in the verifying affidavit in support of the chamber summons dated 12<sup>th</sup> January, 2017. Those objection proceedings shows in the Coram the following people in attendance;

***"TIGANIA EAST ADJUDICITN AREA ANKAMIA ADJUDICIATON SECTION LAND CONSOLIDAITON ACT CAP 283 LAWS OF KENYA***

***OBJECTOR: KATHIORI M'IGWETA (PRESENT)***

***REP BY: PAUL KOBIA KATHIO ID NO. 238420402***

***RESPONDENT: DAVID MWONGERA M'MUBWIKA ID NO. 23842402***

***OBJECTOR WITNESSES; JOYCE KABITHI M'ITHIBUA 4491874, MARGARET MWAMOKOI ID 2518834***

***RESPONDENT WITNESS: DAVIID MUTUMA M'CHOKERA ID 2388539, BENJAMIN KOOME MAINGI ID 2365091***

***OBJECTION NO; 19***

***PARCEL NO; 7484***

***NATURE: DISPUTE***

***HEARING DATE: 16<sup>TH</sup> NOVEMBER, 2016***

From the coram given above it is not in dispute that no committee member was present during the determination of the objection no. 7484. It is imperative at this point to look at section 26 of the land consolidation act cap 283 laws of Kenya which provides as follows:

***“26 (1) any person named in or affected by the adjudication register who considers such register to be inaccurate or incomplete in any respect on who is aggrieved by the allocation of land as entered in the adjudication register, may within sixty (60) days of the date upon which the notice mentioned in section 25 of this act is published at the office of the regional government agent within whose district the adjudication area to which such register relates is situated (and such date shall be entered upon the said notice), inform the adjudication officer stating the grounds of this objection and the adjudication officer shall consider the matter with the committee and may dismiss the objection or if he thinks the objection to be valid, order the committee to take such action as may be necessary to rectify the matter for this purpose.....”***

The law mandates the adjudication and settlement officer to sit with the committee in determining an objection raised by a person who considers that the adjudication register is incomplete or inaccurate. In this case the adjudication and settlement officer sat alone without the aid of the committee as required in law. I find the proceeding and decision of the adjudication and settlement officer made on 22<sup>nd</sup> November 2016 in objection no. 19 ultra vires and therefore null and void abinitio.

In the result, I find merit in the notice of motion dated 7<sup>th</sup> February 2017. The same is hereby allowed in the following terms:

- 1. An order of certiorari be and is hereby issued to remove to this Hon. Court for purposes of quashing the order/decision by the land Adjudication and settlement officer Tigania East District on 22<sup>nd</sup> November 2016 in objection no. 19 involving land registration no. 7484 Karama Adjudication section.**
- 2. The said objection is remitted back to the land adjudication and settlement office to be determined in accordance with the law.**
- 3. Each party to bear his own costs of this application.**

**READ, DELIVERED AND SIGNED BY E. C. CHERONO, ENVIRONMENT AND LAND COURT JUDGE KERUGOYA AT MERU THIS 7<sup>TH</sup> DAY OF DECEMBER, 2018.**

.....

**In the presence of:**

Ms. Munga for exparte applicant

Mr. Muthomi holding brief for Mbaabu Inoti for interested party

C/A - Janet