



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**JUDICIAL REVIEW NO. 2 OF 2017**

**IN THE MATTER OF AN APPLICATION BY FRANCIS KAMATHIA**

**MUGAMBI TO APPLY FOR JUDICIAL REVIEW ORDER OF CERTIORARI**

**AND**

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA**

**AND**

**IN THE MATTER OF LAND PARCELS NO. 8631 KARAMA ADJUDICATION SECITON**

**AND**

**IN THE MATTER OF OBJECTION NO. 4190**

**AND**

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

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**LAND ADJUDICATION AND SETTLEMENT**

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

**MOSES NG'ERE LITHIRA.....INTERESTED PARTY**

**FRANCIS KAMATHIA MUGAMBI.....EXPARTE APPLICANT**

**JUDGMENT**

**BACKGROUND**

This Judicial Review proceedings as is usually the custom was commenced by an exparte chamber summons under order 53 rule 1 civil procedure rules dated 12<sup>th</sup> January 2017 supported by a verifying affidavit statement of facts and the proceedings and decision of the land adjudication officer which is the subject of the leave being sought to remove to this honourable court for purposes of being quashed.

The application was filed under certificate of urgency and placed before the duty judge on 25/1/2017 who upon perusal of the same certified urgent to be heard on priority basis.

The Hon. Judge also granted leave to the exparte applicant to apply for order of certiorari to remove to this Hon. Court the decision of the

land adjudication and settlement officer Tigania East district made on 14<sup>th</sup> November 2016 in objection no. 4190 involving land L.R No. 8631 Karama Adjudication section for purpose of quashing the same and all other orders made therein without jurisdiction.

The court also issued the second prayer that the leave so granted do operate as stay of further proceedings or implementation of the said decision of the land adjudication and settlement officer. On 9<sup>th</sup> February 2017, the ex parte applicant filed the substantive motion under order 53 rule 3 civil procedure rules and section 8 & 9 of the law reform Act cap 26 laws of Kenya.

On 28<sup>th</sup> March 2017 interested party filed his replying affidavit opposing the application. On 5<sup>th</sup> February 2018, Mr. J.M Kiongo, senior Litigation Council in the officer of the Hon. Attorney General filed a notice of appointment on behalf of the Hon. Attorney General and filed grounds of opposition of the application. When this matter came up for directions on 5.2.2018, the parties agreed by consent to canvass the matter by way of written submissions.

#### **APPLICANT'S WRITTEN SUBMISSIONS**

The firm of Maitai Rimita and co. advocates for the applicant filed their submissions on 5<sup>th</sup> February 2018 in which they submitted that from the annexed proceedings and the impugned decision in objection no. 4190, it is clear that the matter was heard in the absence of the committee. He cited section 26 of the land consolidation act which he submitted, required that the committee should sit and make such decision.

The applicant submitted that the land adjudication and settlement officer sat alone and made the decision and that, that decision is therefore nullity and should be quashed. He cited the following authorities:-

- (a) Section 26 of the land consolidation act cap 283.
- (b) Ruling in misc. application no. 235 of 2006.
- (c) Civil appeal no. 28 of 2015 – PETER KIMANDIU VS LAND ADJ. OFFICER TIGANIA WEST DISTRICT &\* OTHERS
- (d) Judgment in JR application no. 36 of 2012 Henry M’Mwika M’Aramba vs District land & Settlement officer & another (Meru ELC)

#### **INTERESTED APRTY'S WRITTEN SUBMISSIONS**

The interested party through the firm of Ngunjiri Michael & Co. advocates submitted that a fully constituted committee had already deliberated and made a decision on the boundary matter and all that the 2<sup>nd</sup> respondent was doing is implementing the decision of the committee which did not require the presence of the committee. He cited the following cases:

1. Esther Muthoni Passaris vs Charles Kanyuga & 2 others (2015) eKLR
2. In ex parte princess Edmond de. Polignac E. 19/7 IKB 486

#### **ANALYSIS AND DECISION**

It has been said again and again that Judicial review is concerned with the decision making process and not the merits of the decision. This judicial review proceeding is challenging the proceedings and the impugned decision of the respondent in objection no. 4190 on the basis that the adjudication and settlement officer had no jurisdiction to make the said decision alone without sitting with the committee.

I have perused the proceeding attached to the verifying affidavit and the decision of the respondent made on 14<sup>th</sup> November, 2016. From the first page of those proceedings, there is no committee member present. The parties present were the objector and his witness and the respondent who is also the objector interested party in this case. It is also reflected from the first page of those proceedings as follows:

TIGANIA EAST ADJUDICATION AREA KARAMA ADJUDICATION SECTION

LAND CONSOLIDATION ACT CAP 283 LAWS OF KENYA

OBJECTOR: MOSES NG'ERE LITHARA

ID xxxxxxxx

WITNESS: FESTUS M'THIRUAINE M'LAARU

RESPONDENT: FRANCIS KAMATHIA MUGAMBI

ID 2442936

WITNESS – NIL

OBJECTIN NO. 4190

PLOT NO. 8631

HEARING DATE: 9<sup>TH</sup> NOVEMBER, 2016

From that coram given by the adjudication and settlement officer the applicable law to the land in question is the land consolidation act cap 283 **Laws of Kenya Section 26 (1)** of that act 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 or who is aggrieved by the allocation of land as entered in the adjudication register, may within sixty days of the date upon which the notice mentioned in section 25 of this act is published ..... inform the adjudication officer stating the grounds of his 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 and for this purpose the committee may exercise all or any of the powers conferred by section 21 of this act (emphasis added).*”**

From my reading of that section it is manifest clear that an objection which has been raised by an aggrieved person must be considered by the adjudication and settlement officer with the committee. The proceedings and the impugned decision made on 14.11.2016 was made by the adjudication and settlement officer without the aid of a committee. It therefore goes without saying that the said decision was made without jurisdiction and is therefore a nullity.

In conclusion I find this judicial Review merited and the same is allowed in the following terms:

- (1) An order of certiorari be and is hereby issued to remove to this Hon. Court the proceedings and the decision of the land adjudication and settlement officer Tigania East adjudication area Karama adjudication section made on 14<sup>th</sup> November 2016 in objection no. 4190 of 2016 involving land parcel no. 8631 Karama Adjudication section and quash the same and any other orders made therein.
- (2) The dispute to be remitted back to the land adjudication and settlement officer for hearing and determination in accordance with the applicable law.
- (3) Each party to bear her own costs of this suit.

**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.**

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**In the presence of:**

M/s Munga for applicant

Mr. Muthomi for Ngunjiri for interested party

C/A Janet