



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

MISCELLANEOUS APPLICATION NO 25 OF 2010

IN THE MATTER OF AN APPLICATION BY LYDIA KURI SILAS FOR ORDERS OF CERTIORARI AND MANDAMUS AND THE MATTER OF SECTION 8 AND 9 OF THE LAW REFORM ACT 26 LAWS OF KENYA

AND

IN THE MATTER OF ATHINGA ATHANJA ADJUDICATION SECTION AND IN THE MATTER OF OBJECTION NOS. 832 AND 371

AND

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

LYDIA KURI SILAS.....APPLICANT

VERSUS

LAND ADJUDICATION OFFICER TIGANIA DISTRICTS....RESPONDENT

MICHAEL MWIRARIA M'MENYI.....1ST INTERESTED PARTY

JULIUS IRUKI THIRUAINA.....2ND INTERESTED PARTY

J U D G M E N T

1. The Judicial Review Notice of Motion dated 5th May, 2010 seeks the following orders:-

(1) That this Honourable Court be pleased to issue an order of CERTIORARI to remove into this Court and quash the decision of the Land Adjudication District Officer Tigania District dated 26th February, 2010 in Objection Case No. 832 and 371 which was made without jurisdiction and contrary to the law of the land.

(2) That this Honourable Court be pleased to issue an order of prohibition to prohibit the Land Adjudication Officer Tigania District from implementing his decisions dated 26 February, 2010.

(3) That the costs of this application be provided for.

2. The motion is supported by the applicant's Affidavit dated 7th april2010 which had been filed along with the chamber summons for leave. In the said affidavit the applicant states as follows:

- (1) That in 1992 or thereabout the applicant bought 1.04 acres of land Parcel No. 3178 ATHINGA ATHANJA ADJUDICATION SECTION from one M'MUNGANIA ITHIRA who is now deceased which was later reduced to 0.84 acres.
- (2) That she started developing the said parcel by planting tress and other crops.
- (3) That the 1st Interested Party was demarcated 1 acre in LINKURUNGU and his three brothers ITURUKI, NAMICHIRA and THIRIBI were also shown their own portions and all of them were satisfied.
- (4) That on 18th December, 2008 the 1st Interested Party herein purporting to represent his deceased father M'THIRIBI IKIAO filed Objection No. 832 against the applicant. In respect of the aforementioned piece of land.
- (5) That in his objection the 1st Interested Party claimed that applicant had been wrongly demarcated for 1 acre out of the above parcel which acre he alleged belonged to his father.
- (6) That the objection was heard and in his decision dated 26th February, 2010 the Respondent herein made an order that 1 acre of the Objector's land be demarcated in LINKURUNGU while that of the then Respondent(present applicant) be demarcated on the land in LUUMA.
- (7) That before the said objection was heard and finalized ,applicant requested the Respondent to disqualify himself from continuing to hear the said objection vide a lettered dated 16th January , 2009 on grounds that he refused to visit the disputed land to ascertain who is in possession of what portion and also because he was biased.
- (8) That the said request was not acted upon but instead the Respondent proceeded to hear the objection without visiting the land.
- (9) That the 2nd Interested Party who was a son of applicant's neighbour filed objection No. 371 on behalf of his father also claiming the applicant's said parcel of land.
- (10) That in a decision which the applicant terms as confused, the 2nd interested Party was also given her (applicant's) land after a correction of the Award dated 26th February, 2010.
- (11) That the land in question is in a potential area where the Headquarters of Tigania East District have been located hence the rush to grab the same in conspiracy with the Respondent.
- (12) That the Adjudication Officer had no jurisdiction to hear and determine the matter under section 26 of the Land Consolidation Act Cap. 283 Laws of Kenya.
- (13) That there were no objections in the matters as the representatives of the deceased had no Letters of Administration to the Estate of the deceased person or authority to represent another person.
- (14) That in the premises and from the foregoing the decision of the Respondent is a nullity and ought not to stand.

3. The annextures referred to in the affidavit of the applicant and which are in support of the MOTION are:-

- i. Proceedings before the land adjudication officer (L.K.S.1).
- ii. Letter to the respondent dated 16/1/2009 (L.K.S.2)
- iii. A decision purporting to correct the award (L.K.S.3)

4. The applicant further relies on the **STATEMENTS OF FACTS** equally filed at the leave stage. The contents thereof are ;

NAME AND DESCRIPTION OF THE PARTIES

i. The Applicant LYDIA KURI SILAS is a female adult of sound mind and whose address of service for purposes of this application shall be care of M/S MAITAI RIMITA & CO. ADVOCATES , STANDARD BANK BUILDING, MOI AVENUE, P.O BOX 3151-60200, MERU.

ii. The Respondent is the Adjudication Officer Tigania District and his address of service shall be P.O BOX KIANJAI, TIGANIA.

iii. The 1st Interested Party is an adult male of sound mind and he is the son of M'THIRIBI IKIAO (deceased).

iv. The 2nd Interested Party is an adult male of sound mind and he is the son of THIRUAINA IKIAO.

5. GROUNDS ON WHICH THE RELIEF IS SOUGHT

a. That the respondent's decision is a nullity as it was made without jurisdiction under Section 26 of the Land Consolidation Act, Cap. 283 Laws of Kenya.

b. That the Applicant was not given a fair hearing in that the Respondent refused to visit the disputed land to ascertain who is in possession despite several requests by the Applicant.

c. That the Respondent was biased in his decision against the Applicant.

d. That the Respondent allowed objections which had no legal claimants.

RELIEF SOUGHT

I. An order of certiorari to remove to this Court for purposes of being quashed the respondent's decision dated 26th February, 2010 vide objection Nos. 832 and 371.

II. An order of prohibition to prohibit the Land Adjudication Officer Tigania from implementing his decisions dated 26th February, 2010.

5. The 1st Interested Party filed a Replying Affidavit dated 3rd December, 2011 where he has deponed as follows:-

1. That in December , 2008 he filed an objection No. 832 before the Land Adjudication Officer Tigania Districts claiming his 1 acre piece of Land.

2. That the said objection was heard and determined on the 26th February, 2010, but that the Adjudication Officer demarcated the deponent's 1 acre of land onto the land parcel no. 3178 ATHINGA/ATHANJA/ADJUDICATION SECTION measuring 0.84 Acres which land **RIGHTLY BELONG TO LYDIA KURI SILAS**, the applicant herein.

3. That 1st interested party did not take up this land or assume its possession because the same does not belong to him but to the said applicant LYDIA KURI and more so it did not add up to the 1 acre that he claimed for which land he is still claiming.

4. That surprisingly one JOSEPH MWIKA MINYORI illegally and/or unlawfully assumed possession of the said land despite having no interest over it or else being a party to the objection

proceedings and he did to the detriment of the Applicant.

5. That despite this the 1st interested party was served with suit papers in respect of the said land parcel No. 3178 ATHINGA/ ATHANJA/ ADJUDICATION SECTION.

6. That the 1st interested party avers that the land parcel No. 3178 ATHINGA/ ATHANJA/ADJUDICATION SECTION belongs to the applicant herein and that he should have his 1 acre of land demarcated at its right place.

7. That the 1st interested party declares that he doesn't wish to defend this suit as the same revolves around land parcel which does not belong to him but belongs to the applicant and as such wishes the same be withdrawn and the decision of the and Adjudication Officer Tigania Districts in respect of objection No. 832 be quashed and his 1 acre of land be demarcated elsewhere at its rightful place.

6. The 2nd Interested Party filed a Replying Affidavit dated 10th April 2012, where he has deponed as follows:-

1. That contrary to the allegations being made by the Ex-parte Applicant, the 2nd interested party was never a party to the objection case No. 832 and 371 as alleged or stated or at all.

2. That to the best of his knowledge, and (as noted from the proceedings), objection case No. 371 was between one THIRUANE IKIAO (who is his father) and the Ex-Parte Applicant herein.

3. That 2nd interested party was not a party to the said proceedings and he only attended the hearing to listen to the proceedings but did not have any participation thereof.

4. That similarly, he was not party to the proceedings in objection case No 832 and cannot plead anything concerning the same.

5. That it therefore follows that he has wrongly been enjoined into these proceedings as he was never a party to any of the proceedings giving rise to the Judicial Review Proceedings.

6. That the person who should have been named herein is one THIRUANE IKIAO and who should be made a party to the proceedings herein.

7. That any orders that may be given by this Court in these proceedings will affect the land parcel belonging to THIRUANE IKIAO and which was subject of the proceedings in Objection Case. No. 371 and that THIRUANE IKIAO sold the same to one JOSEPH MWIKA in the year 2007 and the two should therefore be given an opportunity to ventilate before this Court.

8. That having not been a party to any of the Objection cases cited by the Ex-parte Application herein, the 2nd interested party should not have been dragged into the Judicial Review Proceedings.

7. The Respondent did not file any Reply to the motion

SUBMISSIONS.

8. In her submissions ,the applicant has retaliated what she has stated in the Notice of motion the affidavit and the statement of facts.

She has emphasized that she is the owner of a parcel of land known as Land **Parcel No. 3178 ATHINGA ATHANJA ADJUDICATION SECTION** and that it had been demarcated on the ground for the Ex-parte Applicant after a successful Adjudication and demarcation process.

9. It has been submitted that when objections were opened under Section 26 of Cap. 283 the two interested parties filed objections against the Ex-parte Applicant, mainly on the issue of the site where the Ex-Parte Applicant's land had been demarcated. The 1st Interested Party was apparently using the name of a deceased person without any letters of Administration as required under the Law of Succession Act.
10. Further the applicant states that the effect of the decision was that the 1st Interested Party and the Ex-Parte Applicant had their land exchanged on the ground, the Applicant being taken many miles away in the wilderness.
11. In respect of the 1st interested party, Applicant concludes her submission by stating that the said Party has since seen the folly and refused to take possession and it is clear from his affidavit that he does not support the Respondent's decision.
12. In respect of the 2nd interested party, applicant avers that the objection was no.371 in the name of a deceased THIRUANE IKIAO yet the 2nd Interested Party is JULIUS IRUKI THIRUAININE. It is submitted that the 2nd interested party had no letters of Administration .
13. Applicant further submits that the Respondent after hearing the parties had ordered that the Objector, the 2nd Interested Party have his land demarcated elsewhere on Land Parcel No. 5716. Apparently the respondent changed his mind later and took away the applicants land.
14. Applicant submits that the proceedings before the Respondent were unlawful as they were inconsistent with provisions of Section 26 of Cap. 283. This is because the Land Adjudication officer had no jurisdiction to hear the matter in absence of the committee.
15. Applicant also raises the issue of bias and that she was not accorded a fair hearing. She states that she had requested the Respondent to visit the scene and he didn't. She had then requested the Respondent to disqualify himself, but he didn't.
16. The 1st Interested Party didn't file any Submissions, rightly so in light of the contents of his Replying affidavit(where he is supporting the Judicial Review).
17. The 2nd interested party's submissions are that he is not the one who filed the Objection no.371, that it is his father one THIRUANE IKIAO who did so, and that the said objector is alive.
18. The 2nd interested party states that he has never claimed ownership of the land in dispute nor has he ever been in occupation or possession of the same.
19. He, the 2nd Interested Party however avers that the suit land is in possession of one JOSEPH MWIKA MUNYORI who had purchased the same from THIRUANE IKIAO. For that reason 2nd interested party submits that the said THIRUANE IKIAO should have been named as an interested party herein so as to enable the court come to a just and informed decision.
20. In his conclusion, the 2nd interested party submits that the ex-parte Applicant has not raised any sufficient or reasonable cause of action and her application dated 05/05/2010 should be dismissed with costs.
21. THE RESPONDENT'S SUBMISSIONS are in support of the Applicants motion. The submissions are more or less similar to those of the applicant.
22. The gist of the Respondents submission are that the Land Adjudication Officer had no Jurisdiction to hear and determine the objection in absence of a committee as is stipulated under section 26 of cap 283 of the laws of Kenya.
23. The Respondent also states that the Land Adjudication Officer had no Jurisdiction to hear the

objection cases No. 832 and 371 on account of the fact that Notice was not issued to the then Respondent in the aforementioned objections.

24. Both the Applicant and Respondent have relied on the same citation, that is **MERU HIGH COURT MISC. APPLICATION NO. 235 OF 2006** where the “Learned Judge stated that it is the Committee which had jurisdiction to hear objections and not the Land Adjudication Officer” as it is the case in this present suit.

25. Further, the Respondent states that the Land Adjudication Officer in his decision has directly admitted that he did include parcel No. 5716 in his decision and yet it did not have an objection filed against it.

The Respondent concludes by urging the court to find that the errors manifested in the objections no. 832 and 371 could not have occurred, had the land Adjudication Officer involved the committee.

THE RECORD

26. The proceedings and the decision complained of are apparently captured in the applicants annexures L.K.S.1 and 3. This record is barely discernible. The court is only able to read page one of the proceedings marked L.K.S.1. The other pages are rather faint especially the decision marked L.K.S.3. That notwithstanding, this court will proceed to determine the issues at hand guided by the pleadings and the submissions herein.

DETERMINATION

27. The respondent herein is represented by a state counsel who has found fault with how the proceedings before the Land adjudication officer were conducted. What has emerged is that the Land adjudication officer proceeded to hear the dispute without the committee contrary to section 26 of the Land Consolidation act cap 283. There is also no basis upon which the the Land Adjudication officer at Tigania arrived at the decision dated 29th February, 2010. None of the interested parties herein have rebutted these averments. If anything, the 1st interested party is wholly in agreement with the prayers sought for. That being the case the motion must succeed on the basis that the Land Adjudication officer lacked jurisdiction to hear the objections no.832 and 371.

28. I however find it necessary to interrogate other issues raised by the parties.

- i. Are letters of administration for estate of deceased requisite documents in adjudication proceedings.
- ii. Should the applicant have enjoined THIRUANE IKIAO and JOSEPH MWIKA as interested parties herein.
- iii. Was there biasness and unfairness in the proceedings before the D.L.A.S.O.?

29. Are letters of administration for estate of deceased requisite documents in adjudication proceedings.

As I have stated herein the objection proceedings are not clearly discernible. However page 1 of annexure L.K.S.1 indicates that objector in No.832 is one M'THIRIBI IKIAO (Deceased). The deceased was however represented by his son MICHAEL MWIRANIA M'MENYI who is the 1st Interested Party. That was quite in order. I make reference to the case *No. HCCC NO. 4 (Kisii) of 2011 of Tobias Achola Osindi & 13 Others Vs Cyprianus Otieno Ogalo & 6 Others*, here Judge Okongo held that

“ A claim for an interest in land made under the Land Adjudication Act, Cap. 284, Laws of Kenya (hereinafter referred to only as “the Act”) following the declaration of an area as an Adjudication Area or an Adjudication Section cannot be equated to a claim before this

court. A claim under the Act pursuant to section 13 thereof can be made by every person who considers that he has an interest in land within an adjudication section. A claim under section 13 of the Act can be made by successors of a deceased person and not necessarily the deceased's legal representatives. See, section 13 (5) of the Act. The purpose of a claim under the Act is to aid in the ascertainment of the rights and interest of persons in the land within an adjudication area."

30. In respect of objection No.371, it is not clear as to who was the actual objector. If the scenario was one similar to that in objection No.832, the same principles would apply. It follows that had the applicant based her application on the ground of lack of letters of administration alone, she could not have succeeded.

31. Should the applicant have enjoined THIRUANE IKIAO and JOSEPH MWIKA as interested parties herein.

Should applicant have joined THIRUANE IKIAO and JOSEPH MWIKA in these proceedings? Joseph Mwika has been mentioned by the first Interested party as the person who assumed the alleged illegal occupation of the land in question. The 2nd interested party identifies Joseph Mwika as the purchaser of the land, having bought the land from Thiruane ikiao. The 2nd interested party has stated that these are issues that were deliberated upon in objection No.371. The court is not able to ascertain these averments from the proceedings. On this point, I am in agreement with the 2nd Interested Party that it would have been far much better to enjoin the two persons as interested parties in the event that they are alive. The failure to enjoin them however has no bearing on the final conclusion in view of the fact that this court has already made a finding that the Land Adjudication officer had no jurisdiction.

32. Was there biasness and unfairness in the proceedings before the D.L.A.S.O?.

The basis upon which the applicant raises this issue is that he had requested the D.L.A.S.O to visit the scene. The request was not accepted she, (applicant) had then requested in writing that the D.L.A.S.O who was dealing with the matter to disqualify himself. The full content of the request is captured in the document marked LKS 3.

33. This Court is not in a position to know if the applicant's fears were baseless or not. However one of the cardinal Principles of fairness is being given an opportunity to be heard. Was the applicant's letter responded to?. Were her fears addressed ?. There is nothing to indicate that the applicants complaints were addressed at all.

34. Fairness is a LEGITIMATE EXPECTATION and is a right enshrined in the Constitution, article 50 (1) ***"Every person has the right to have any dispute that can be resolved by the application of law decided in fair and public hearing before a Court or, if appropriate, another independent and impartial tribunal or body"***.

In so far as the applicants complaints were not addressed or responded to, I do find that the proceedings were not conducted fairly. It is in order to conclude that there was **bias**. The upshot of this is that the motion succeeds on this ground too.

35. In conclusion I hereby allow the motion dated 5th May, 2010 and I hereby issue orders of:-

4. CERTIORARI to remove into this Court and quash the decision of the Land Adjudication District Officer Tigania District dated 26th February, 2010 in Objection Case No. 832 and 371 which was made without jurisdiction and contrary to the law of the land.

5. Prohibition to prohibit the Land Adjudication Officer Tigania District from implementing his decisions dated 26 February, 2010.

6. In light of the nature of this case, each party is to bear their own costs.

36. It is so ordered.

DELIVERED IN OPEN COURT AT MERU THIS 14TH MARCH, 2017 IN THE PRESENCE OF:-

CA:Janet

Mbaikiata Miss for Exparte Applicant

Kiango for AG

L.N.MBUGUA

JUDGE