



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

MISC.CIVIL APPLICATION NO. 38 OF 2012

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF CERTIORARI TO MOVE THIS HONOURABLE COURT AND QUASH THE DECISION OF 23.3.2012 BY THE HONOURABLE MINISTER OF LAND AND SETTLEMENT THROUGH THE DISTRICT COMMISSIONER WEST POKOT IN APPEAL NO. 170 OF 1995 IN REGARD TO PLOT NO. 442 CHEPARERIA ADJUDICATION SECTION

AND

IN THE MATTER OF SECTION 159 OF THE REGISTERED LAND ACT CAP.300 OF THE LAWS OF KENYA

BETWEEN

REPUBLIC

.....

....APPLICANT

=VERSUS=

THE MINISTER OF LAND AND SETTLEMENT

.....**1ST RESPONDENT**

NGURATIANG LOKATAP YOPOLUP

...2ND RESPONDENT

CHEPTAKAR

LONGIRO

STEPHEN LONGIRO (ADMINISTRATORS OF THE ESTATE OF LONGIRO LOTULIANGIRO.....Ex-Parte APPLICANTS

RULING

INTRODUCTION

1. The ex-parte applicants are the administrators of the Estate of the late Longiro Lotuliangiro who had a dispute with the second Respondent over a parcel of land in West Pokot. The dispute dates back to the early 80's. The dispute was dealt with under the provisions of the Land Adjudication Act. The dispute ended up with an appeal to the Minister as provided under the Act. The Minister through the District Commissioner West Pokot made a decision on the Appeal before him on 20th July 2011.

2. The ex-parte applicant filed a Notice of Motion dated 18th July 2012 seeking to have the Ministers' decision allegedly made on 23rd March 2012, moved to this Court and quashed. The ex-parte applicant died before the application could be heard and was substituted by his administrators who are now the present ex-parte applicants.

3. The ex-parte applicants contend that the minister had no jurisdiction to deal with registered land. This is why they are now seeking that the decision of the minister be quashed.

4. The ex-parte applicants' application is opposed by the 2nd Respondent based on a replying affidavit sworn on 6th June 2016. The 2nd Respondent contends that there was no decision made by the Minister on 23rd March 2012 capable of being quashed. That the Minister's decision was made on 20th July 2011 and therefore this application was made out of time. The second Respondent further contends that leave to file this application should not have been granted in the first place.

5. The 2nd Respondent further contends that the proceedings herein were commenced before the ex-parte applicant's name was put in the register and therefore the Minister had jurisdiction to entertain the appeal.

6. I have carefully considered the ex-parte applicants' application as well as the opposition to the same by the 2nd Respondent. The attorney general though served did not enter appearance or file any response. Mr Odongo from the Attorney General's office only indicated that they were not opposed to the ex-parte applicants' application.

7. I must say at the outset that this application is incompetent. There was no decision made by the Minister on 23rd March 2012. The Ministers' decision through the District Commissioner West Pokot was made on 20th July 2011. What is being referred to as a decision was a letter dated 23rd March 2012 addressed to the District Surveyor West Pokot from the Ministry of Lands and settlement in Nairobi. This letter was advising the District Surveyor to move and implement the decision of the District Commissioner West Pokot.

8. The decision which should have been the target of this application was the decision made on 20th July 2011. This being an application for an order of certiorari, it ought to have been made within six months from the 20th July 2011. Even if the application would have been made within the required time and targeted a proper decision, this application would not have seen the light of the day. The proceedings which culminated in the appeal to the Minister were commenced in the early 80's . The appeal to the minister was filed in 1995 even before the name of the ex-parte applicant was put in the register. The District Commissioner therefore had jurisdiction to entertain the appeal.

9. Section 27 of the Land Adjudication Act gives the adjudication officer powers to forward the adjudication register to the Chief Land Registrar together with any appeals which are pending. Upon the Chief Land Registrar receiving the adjudication register under section 27 of the Act, by dint of Section 28, the Chief Land Registrar is at liberty to cause registration to be effected in accordance with the adjudication register provided where the land is affected by an appeal under Section 29, a restriction shall be made in the register in the respect of the Land expressed to endure until the determination of the appeal.

10. The name of the x-parte applicant was put on the register subject to conclusion of the appeal which had already been lodged to the minister. This was strictly in accordance with the aforesaid sections of the Land Adjudication Act. The ex-parte applicant's name was put in the register on 1st July 1998 and on the same day a restriction was put on the register on the same day in accordance with the provisions of Section 28 of the Land Adjudication Act. The District Commissioner of West Pokot who was acting on behalf of the Minister had jurisdiction to entertain the appeal. I therefore find that the applicants' Notice of Motion dated 18th July 2012 lacks merit. The same is dismissed with costs to the 2nd Respondent.

It is so ordered.

Signed at Nairobi.

E.OBAGA

JUDGE

Dated and Delivered at Kitale on this day 29th of May, 2017

F.M.NJOROGE

JUDGE

In the presence of:-

Mr. Majanja for Ms. Chebet for applicant

Court Assistant - Isabellah

F.M.NJOROGE

JUDGE