



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU**

**ELC JR NO. 8 OF 2014**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR AN ORDER OF  
MANDAMUS**

**AND**

**IN THE MATTER OF THE ADJUDICATION ACT CAP 284 LAWS OF KENYA**

**AND**

**IN THE MATTER OF MINISTER'S APPEAL CASE NO. 143 OF 1996, KIRIMA  
ADJUDICATION SECTION**

**AND**

**IN THE MATTER OF JUDICIAL REVIEW**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE CHIEF LAND REGISTRAR.....1<sup>ST</sup> RESPONDENT**

**THE DIRECTOR OF LAND AND**

**JUDICATION AND SETTLEMENT.....2<sup>ND</sup> RESPONDENT**

**THE DIRECTOR OF SURVEYS.....3<sup>RD</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**AND**

**NJIRU KITHUA.....EX-PARTE APPLICANT**

**JUDGEMENT**

1. By a notice of motion dated and filed on 2<sup>nd</sup> October 2012, the *ex-parte* applicant sought the following orders against the Respondents;

a. That the Honourable court be pleased to issue an order of mandamus to compel the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents herein to discharge their statutory duty under section 29 of the Land Adjudication Act Cap 284 Laws of Kenya and specifically to implement the Minister's decision in the Land Appeal Case No. 143 of 1996, Plot No. 2244, Kirima Adjudication. (sic)

b. That costs of the application be provided for.

2. The said motion was based upon the matters set out in the chamber summons application for leave, statutory statement, verifying affidavit and annexures thereto. In a nutshell, the *ex-parte* applicant was aggrieved by the failure of the Respondents to implement the decision of the Minister responsible for matters relating to land in Appeal Case No. 143 of 1996 relating to *plot No. 2244 Kirima Adjudication Section*. The Minister's said decision was made pursuant to an appeal under **section 29 of the Land Adjudication Act**.

3. The Attorney General filed a replying affidavit on 14<sup>th</sup> February 2013 which was sworn on 12<sup>th</sup> February 2013 by the District Surveyor, Mbeere District. In the said affidavit, it was stated that the 4<sup>th</sup> Respondent had visited the site on 1<sup>st</sup> August 2012 with a view to implementing the Minister's decision but was hindered from doing so by the *ex-parte* applicant who objected to the surveyor using the official map. The *ex-parte* applicant was alleged to have come with his own map which he insisted was the correct map to be used. The surveyor stated that the map of the *ex-parte* applicant could have given them over 500 acres whereas the acreage awarded by the Minister was only 143 acres.

4. The *ex-parte* applicant filed a supplementary affidavit sworn on 28<sup>th</sup> February 2013 in which he stated that he visited the 4<sup>th</sup> Respondent on more than 8 occasions requesting him to implement the Minister's decision to no avail. He denied hindering the 4<sup>th</sup> Respondent from implementing the said decision on 2<sup>nd</sup> August 2013 and asserted that the 4<sup>th</sup> Respondent was not accompanied by the District Land Adjudication and Settlement Officer and so he could not have implemented the decision alone. The applicant, however, conceded that he had an issue with the map the 4<sup>th</sup> Respondent carried along.

5. It would appear that the parties herein had agreed to dispose of the said application for judicial review through written submissions. The record indicates that the applicant filed his submissions on 19<sup>th</sup> December 2014 but the Attorney General does not appear to have filed any submissions on behalf of the Respondents. The court shall, nevertheless, proceed to determine the application.

6. It was submitted on behalf of the applicant that vide Minister's Appeal Case No. 143 of 1996 the applicant was awarded 143 acres on behalf of Rweru clan of the Mbeere tribe. The said land was to be excised from plot No. 2244 Kirima Adjudication Section. The said decision resulted from an appeal filed by the *ex-parte* applicant on behalf of his said clan under section 29 of the Land Adjudication Act which makes such decision final.

7. It is not in dispute that the said decision is still in existence. The acreage awarded by the Minister is not in dispute either. The court has seen several letters annexed to the application for leave in which the 4<sup>th</sup> Respondent was asked to implement the decision of the Minister. Those letters were written by the Director of Land Adjudication and Settlement as well as the Director of Surveys on diverse dates between 2008 and 2012. There is also on record a letter dated 3<sup>rd</sup> April 2008 from the DC Mbeere District to the 2<sup>nd</sup> Respondent requesting implementation of the Minister's decision.

8. The court has considered the explanation given by the 4<sup>th</sup> Respondent for the failure to implement the said decision in Appeal Case No. 143 of 1996. The decision was rendered on 24<sup>th</sup> May 2007 which is more than 10 years ago. The court finds absolutely no good reason why the Respondents have not implemented the said decision. The purported obstruction by the applicant and heavy workload are merely excuses. How could a single civilian from the Mbadi clan hamper several government agencies from implementing the Minister's decision for so many years? The Respondents have a statutory duty to implement the Minister's decision under the Land Adjudication Act. The court cannot buy the excuse

that a single individual thwarted the Respondents' determination to implement it. The excuse of heavy workload is also not tenable. There is heavy workload everywhere in government but public officers must deliver on their mandate and perform their statutory duties within a reasonable period. The delay of about 10 years is totally unreasonable.

9. In the premises, the court is satisfied that the applicant has made out a case for the grant of the order of judicial review sought. One of the purposes of judicial review is to review administrative action for the purpose of ensuring that public agencies and officers act fairly towards the citizen and that they abide by the law. This court shall not shy away from facilitating the realization of the objective.

10. The upshot of the foregoing is that the court finds merit in the *ex-parte* applicant's notice of motion dated 2<sup>nd</sup> October 2012 and the same is consequently allowed as prayed with costs to be borne by the Respondents.

11. Orders accordingly.

**JUDGEMENT DATED, SIGNED and DELIVERED** in open court at **EMBU** this **12<sup>th</sup>** day of **OCTOBER, 2017**

In the presence of Ms Muriuki holding brief for Ms Rose Njeru for the *ex-parte* applicant and in the absence of the Respondents and the interested party.

Court clerk Njue/Leadys.

**Y. M. ANGIMA**

**JUDGE**

**12.10.17**