



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 32 OF 2016

MISC. CIVIL APPLICATION FOR JUDICIAL

REVIEW ORDERS OF MANDAMUS

AND

IN THE MATTER OF SECTION 8 & 9 OF THE LAW

REFORM ACT (CAP. 26 LAWS OF KENYA)

AND

IN THE MATTER OF SECTION 30 OF THE LAND

ADJUDICATION ACT (CAP.284 LAWS OF KENYA

AND

IN THE MATTER OF THE DISPUTE OVER OCCUPATION AND

OWNERSHIP OF THE LAND PARCEL NUMBERS 5796 IN

AKIRANG'ONDU 'A' ADJUDICATION SECTION

IN IGEMBE NORTH DISTRICT

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE DISTRICT LAND ADJUDICATION & SETTLEMENT

OFFICER IGEMBE NORTH DISTRICT.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

JAPHET KAMONYO.....INTERESTED PARTY

EX-PARTE APPLICANT.....REUBEN LIRIA

R U L I N G

BACKGROUND

The Preliminary Objection filed by the Interested Party on 08.12.16 and by the Attorney General filed on 06.12.16 raise just one issue. That the application filed on 17.10.16 offends the express provisions of section 30(3) of cap 284 (land Adjudication Act) laws of Kenya.

In the application of 17.10.16, the Exparte Applicant is seeking leave to apply for Judicial Review orders of Mandamus.

The background of the matter is that Exparte Applicant claims that the Interested Party has unlawfully alienated part of the property known as 5796 in Akirangondu "A" Adjudication Section which land belongs to Exparte Applicant. The Exparte Applicant desires to institute a civil suit in order to recover the alienated portion of land. To do that, the Ex Applicant requires consent of the 1st Respondent. He applied for the same but it was not forthcoming hence the present application.

The parties agreed to have the matter canvassed by way of Written Submissions.

Submissions:

According to the Interested Party and Respondent it is averred that the Exparte Applicant has not exhausted the laid down mechanisms provided for under Section 30 of cap 284 in the matter of obtaining the requisite consent.

They aver that if the Consent was denied, then Exparte Applicant ought to have appealed to the Minister as is provided for under Section 30 (3) of the aforementioned Act. To buttress their case, both Interested Party and Respondent have cited the cases of *Mary Wangui Parmutia & Anor v. District Land Adjudication & Settlement Officer & 2 others JR 23 OF 2015 ELC Nakuru* and the case of *Stephen Muchuki Kiunga v. Nkuni M'Turuchiu & 2 Otehrs Pet No.21 of 2012 ELC Meru*. In both cases, the Court was dealing with a situation where the claimants had not exhausted the Appeal Mechanism provided for under Section 30 of Cap 284.

For the Exparte Applicant it has been argued that the appeal to the Minister is not due because the District Land Adjudication Settlement Officer has not made any official communication. The Exparte Applicant hence argues that Wangui Parmutia's Case can be distinguished from the present case.

Determination

Annexure RL2 in the Exparte Applicant's documents is the letter written to 1st Respondent on behalf of Exparte Applicant in order to trigger the process captured under Section 30 of Cap 284. From the contents of paragraph 16 and 18 of the Exparte Applicant's Affidavit of 17.10.16, the 1st Respondent has simply declined to issue the consent.

Under S. 30(3) of Cap 284, an aggrieved person is supposed to appeal to the Minister within 28 days from the time the consent was denied.

If Exparte Applicant was to appeal to the Minister, what would be his reference point?. What date would he quote as the date of refusal of the consent.

This is a case where the Respondent doesn't indicate his stand to the applicant's request for consent.

The case can therefore be distinguished from the authorities cited by Respondent and Interested Party. Section. 30 (3) of Cap 284 contemplates situation where the 1st Respondent makes a formal communication to deny or give consent or to make relevant directions. It is only then that Exparte Applicant would be able to move to the next step. As at now, I am in agreement with Exparte Applicant's contention that it is not possible to determine when the 28 days period will run from, unless a formal communication is made.

Conclusion

I therefore find that both preliminary Objections are unmerited. They are dismissed with costs to Exparte Applicant.

The Application of 17.10.16 is allowed.

Further, the Exparte Applicant is hereby granted leave to apply for Judicial Review orders of Mandamus. The substantive motion to be filed and served within 21 days from today.

DELIVERED, SIGNED AND DATED IN OPEN COURT AT MERU THIS 4TH DAY OF OCTOBER, 2017

IN THE PRESENCE OF:

CA: Janet

Kiongo for Respondent present

Kiome h/b for Karuti for Exparte Applicant

Hon. L.N. MBUGUA

