



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW APPLICATION NO. 36 OF 2012

IN THE MATTER OF AN APPLICATION BY HENRY M'MWIKI M'ARAMBA TO APPLY FOR ORDERS OF CERTIORARI

AND

IN THE MATTER OF LAND PARCEL NO. 5973 ANTUBETWE KIONGO ADJUDICATION SECTION

AND

IN THE MATTER OF OBJECTION NO. 3234 OF 2010

AND

IN THE MATTER OF LAND CONSOLIDATION ACT, CAP 283 LAWS OF KENYA

HENRY M'MWIKI M'ARAMBA.....APPLICANT

VERSUS

DISTRICT LAND AND SETTLEMENT

OFFICER-IGEMBE.....RESPONDENT

KOOME GEOFFREY.....INTERESTED PARTY

JUDGMENT

In the Notice of Motion filed on 19.12.12, the Ex parte Applicant prays:-

“that this Honourable Court be pleased to issue an order of certiorari to remove to this Court the decision of Land Adjudication and Settlement Officer Igembe made on 7th June, 2012 in Objection No. 3234 of 2010 involving Land Parcel No. 5973 ANTUBETWE KIONGO ADJUDICATION SECTION and quash the same and other orders made therein without jurisdiction and against the Law of the Land.”

The grounds in support of the Judicial Review Motion are that: -

“ (a) The respondent acted unlawfully in excess of his jurisdiction and against clear provisions of Section 26 of Cap 283 in entertaining a dispute which ought to have been left to

be heard by the committee.

(b) The Respondent acted ultra vires and illegally in entertaining and deliberating over a dispute brought up by a person who had no Locus Standi.”

The leave to file this suit was granted on 3.12.12 with an order that the said leave was to operate as a stay of the Respondent’s decision of 7.6.12.

The motion is opposed by the Interested Party through his affidavit of 19 .9.13.

Way back on 20.11.14 (almost 3 years ago) Mr. Kiongo for the Respondent had addressed the Court as follows:-

“We need time to put in a defence.....”

The Court granted the Respondent 26 days to put in their response.

3 years down the line, the Respondent has never filed a response.

The matter was heard by way of written submissions and the Respondent informed the Court that they would be relying on the submissions of the Interested Party.

APPLICANT’S CASE

In his Verifying Affidavit, the Applicant avers that he owns Land Parcel No. 5973 at Antubetwe Kiongo Adjudication Section after having bought the same from one M’Impwi M’Mangati. The land was 0.85 acres.

The Interested Party had filed an A/R objection claim No. 3234 in respect of the land parcel number 5973.

The Ex parte Applicant contends that the Adjudication process is under the Land Consolidation Act and hence pursuant to the provisions of Section 26, the matter was supposed to be heard with aid of a committee.

The objection proceedings were apparently conducted without the aid of a committee.

In support of his case, the applicant has cited the case, Misc. Application No. 235 of 2006, and Civil Appeal No. 28 of 2015 Peter Kimandu Vs Land Adjudication Officer, Tigania West District & Others.

INTERESTED PARTY’S CASE

The Interested Party claims that he is the one in possession of the land Parcel No. 5973 and that he has developed the land. He admits that the Applicant utilizes some part of the suit land.

The Interested Party avers that when he filed the objection case, the Ex Parte Applicant was unable to prove his case and did not avail any witnesses. He maintains that the case was heard by the Land Adjudication Officer in the presence of other committee members.

DETERMINATION

It is trite law that the court would not deal with the **MERITS OF THE DECISION** but **THE DECISION MAKING PROCESS** see **Municipal Council of Mombasa Vs. Republic & Umoja Consultants Ltd. Civil Appeal No. 185 of 2001** where the Court of Appeal held:-

“Judicial review is concerned with the decision making process, not with the merits of the

decision itself:”

The Court therefore cannot and will not determine the issue of possession and ownership of the land.

The applicant avers that the applicable law is the Land Consolidation Act (Cap 283 Laws of Kenya). This has not been disputed.

The issue for determination is only one. Whether the proceedings in Objection Case No. 3234/10 were conducted in absence of a committee.

The proceedings in Objection Case No. 3234/10 are not very legible. However, I am able to discern the following: -

- **That the Land Adjudication Officer conducted the proceedings and cross-examined the witnesses.**
- **That there is no evidence of a committee member having participated in the proceedings.**

The Respondent has associated himself with the submissions of the Interested party. If there was such a committee, what was so difficult in stating so?. It is noted that the Respondent never filed grounds of opposition or any response to the main motion despite a promise to do so for the last 5 years. I can only conclude that there is no evidence to rebut the Applicant’s claim in so far as issue of a committee is concerned.

The Interested Party too has only stated that there was a committee. Who were these members? How many were they? I am inclined to believe that the decision by the Land Adjudication Officer was given without the Aid of a committee. The authorities cited by the Ex Parte Applicant are hence relevant.

CONCLUSION

- 1. The Court hereby issues an order of Certiorari to remove to this Court the decision of Land Adjudication and Settlement Officer Igembe made on 7th June, 2012 in objection No. 3234 of 2010 involving Land Parcel No. 5973 ANTUBETWE KIONGO ADJUDICATION SECTION and quash the same and other orders made therein against the Law applicable.**
- 2. The dispute is to be remitted back to the Land Adjudication Officer for hearing and determination in accordance with the applicable Law.**
- 3. Each party to bear their own costs of the suit.**

DATED, SIGNED AND DELIVERED AT MERU THIS 23RD DAY OF NOVEMBER, 2017

IN THE PRESENCE OF:-

CA: Janet

Murega for Ex-parte Applicant

Kiogora A. for Interested Party

Hon. L. N. MBUGUA

ELC JUDGE