



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ELC JR MISC. APPLICATION NO. 47 OF 2011
IN THE MATTER OF AN APPLICATION FOR JUDICIAL
REVIEW FOR ORDERS OF CERTIORARI

AND

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

AND

IN THE MATTER OF THE DECISION OF LAND ADJUDICATION OFFICER, IMENTI SOUTH DISTRICT OBJECTION NOS. 102,103,104,105,106,107,108,109,110, 111,112 AND 113 IN TRIBUNAL'S DECISION IN RESPECT OF L.R. MWERU III ADJUDICATION SECTION NOS 290,330,331,332,333,334,335,336,337,338,339 AND 340 MADE ON 6/5/11

AND

IN THE MATTER OF THE LAW REFORM ACT SECTIONS 8 AND 9 AND IN THE MATTER OF CIVIL PROCEDURE ACT ORDER 53 OF CIVIL PROCEDURE RULES

BETWEEN

M'RIRIA M'MURANGA.....EXPARTE APPLICANT

VERSUS

LAND ADJUDICATION OFFICER

IMENTI SOUTH DISTRICT.....RESPONDENT

AND

ZAKARIA KAARIA M'ARITHI.....1ST INTERESTED PARTY

HUMPHREY KOBIA NGARUNI.....2ND INTERESTED PARTY

VERSUS

MIRINGU MUCHAI IKABU.....1ST DEFENDANT

JUDGMENT

1. The Notice of Motion dated 4th August, 2011 seeks the following orders:-

1) That an order of certiorari do issue to remove to this High Court the decision of the land Adjudication officer , Imenti South District made on 6/5/2011 in objection Nos. 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, and 113 in respect of L.R Mweru 111 Adjudication Section Nos 290, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339 and 340 and quash the same and all orders made thereon.

2) The Respondent and the Interested Parties do pay the costs of the Motion.

2. The Application is based on the following grounds that:-

a) The Respondent visited the parcels in dispute in the absence of, and without notification or summons to the Ex-parte Applicant.

b) The Respondent denied the Ex-Parte Applicant the opportunity to challenge the evidence collected when he visited the parcels and thereby breached a basic principle of natural justice.

c) The Respondent concluded the proceedings without the aid of a committee.

d) The Respondent's decision was manifestly unreasonable.

3. Leave was granted to bring forth the Judicial Review proceedings on 20.7.11. The same was to operate as a stay of the implementation of the Respondent's decision of 6.5.11.

Case for Ex Applicant

4. The case for the Ex Parte Applicant is captured in the statement of facts and in his affidavit in support of the suit. What he contends is that all the aforementioned parcels of land are subdivisions of his large ancestral land owned by his clan Abothuguchi/Kamanga.

5. He also avers that the dispute over the ownership of the aforementioned parcels of land was determined before the Land Arbitration Board whereby the parcels were awarded to him in a decision of 1.4.05.

6. Ex parte Applicant was therefore aggrieved by the Respondent's decision of 6.5.11 on account of the following:-

i. That the rules of natural Justice were violated by Respondent as Respondent visited the suit plots in absence of the Ex Parte Applicant.

ii. That the Respondent conducted the proceedings without the aid of a committee.

iii. That the decision of Respondent was manifestly unreasonable.

Case for Interested Parties

7. The Interested Parties have filed replying affidavits in response to the Judicial Review Motion.

8. For the 1st Interested Party, he avers that parcels No. 330,332 and 335 in Mweu Adjudication Section belong to Abothua clan of which he is a member.

9. 2nd Interested Party avers that his clan is that of Aboiguna which owns land parcels No. 290,331,333,334,336,337,338,339 and 340 all in Mweu Adjudication Section.

10. The Interested Parties aver that Ex parte Applicant belongs to the Abothuguchi clan which is separate from Aboiguna clan.

11. The Interested parties also aver that the Ex parte Applicant was present during the site visit of the parcels of land, that he has never occupied the suit land, and that he has never complained of any bias.

12. The interested parties contend that the District Land Adjudication & Settlement Officer's decision of 6/5/2011 is not unreasonable.

Case for Respondent

13. The Respondent did not file any response to this suit despite the fact that he was aware of the matter as far back as 9/12/2014 (see the record).

14. Way back on 24.9.15 directions were given for the suit to be heard by way of written submissions. Such submissions have since been filed by all the parties including the Respondent.

Issues for determination

15. I have considered all the submissions, authorities and arguments raised herein. I frame the issues for determination as follows:-

a) What is the applicable Law?

b) Whether the suit can succeed on the basis that the decision of the respondent is wanting for lack of a committee.

c) Whether the rules of Natural Justice were violated by the District Land Adjudication & Settlement Officer in his failure to allow the Ex parte Applicant to participate in the scene visit.

d) Whether the decision of Respondent was biased or unreasonable.

What is the applicable Law?

16. I am not able to discern from the proceedings before the District Land Adjudication & Settlement Officer as to what law was being applied. However, the Ex parte Applicant's Notice of Motion is brought under;

- the Land Adjudication Act Cap 284

- Law Reform Act

- Civil Procedure Act

17. I will therefore proceed to determine the matter on the basis that the applicable substantive law is the **Land Adjudication Act Cap 284.**

Whether the suit can succeed on the basis that the decision of the respondent is wanting for lack of a committee.

18. It has been stated by the Ex Parte Applicant that the District Land Adjudication & Settlement Officer failed to involve a committee in his decision .Nothing much has been said on this issue by all the parties

herein. Not even the Respondent. However, having found that the law applicable is the Land Adjudication Act, then I find that section 26 of the said act is the proviso to be invoked. There is no requirement for the Respondent to sit with a committee under this section.

19. In the case of **Francis Linguli Judicial Review No. 56 of 2010** cited by the Ex parte Applicant, the proceedings appear to have been brought under the Land Consolidation Act, whereby a committee is a mandatory feature.

20. The motion cannot succeed on the basis that there was no committee.

Whether the rules of Natural Justice were violated by the District Land Adjudication & Settlement Officer in his failure to allow the Ex parte Applicant to participate in the scene visit.

21. It is contended by the Ex parte Applicant that Respondent conducted a scene visit on the land but he denied the Ex parte Applicant the opportunity to be heard. He contends that no date is shown as to when the scene visit was conducted and that he was denied a chance to challenge whatever evidence was collected at the scene.

22. The Interested Party on the other hand contends that the Ex parte Applicant was at the scene and that parties even contributed on the transport arrangement.

23. Respondent has submitted that Ex parte Applicant has not explained how he failed to attend the scene visit.

24. The claim by the Ex parte Applicant that he was not given a chance to participate in the scene visit is not clear. For instance, Ex parte Applicant avers that the scene visit was scheduled on 7.4.11 but that it was postponed. He has not explained as to how he learnt of the postponement and when this scene visit was conducted.

25. As rightly submitted by the Interested Parties, the records of the proceedings before the Respondent on page 52 capture the findings of the District Land Adjudication & Settlement Officer with regard to the scene visit, where it is stated:-

“I have considered all the issues raised and also visited the locus. During the site visit, I noted that the land is developed by the objector. The Respondent even admitted that the land was erroneously awarded to him by the Arbitration Board.....”

26. This buttresses Interested Party’s contention that Respondent had participated in the site visit.

27. Another issue that Ex parte Applicant alleges is that he was not given an opportunity to challenge the evidence collected at the scene. From the findings of the District Land Adjudication & Settlement Officer, with regard to the scene visit on parcel 330, 332 and 335, 331, 333, 334, 336, 337, 338, 339, 340 and 341 the Respondent (DLASO) had observed that;

“whereas the objectors (present interested parties) have made efforts to bring the land into their actual and real possession, it appears that the Respondent (present Ex Applicant) has not effectively done the same apart from through a proxy in the name of one Isakwa.....”

28. In respect of parcels No. 290, Respondent (DLASO) herein had this to say about the scene visit;

“I noted that the land is developed by the objector (Humphrey Kobia, the present 2nd Interested Party)”

29. It follows that the main observation Respondent made at the scene was that of occupation.

30. Was the Ex parte Applicant given a chance to ventilate this issue of who was in occupation of the suit parcels?

31. I note that the issue of occupation of the land had been dealt with during the hearing of the objection proceedings, whereby in respect of the several parcels, Ex parte Applicant had stated that no one from his clan was in occupation of the land save Ngutiri Mutia who was on plot No. 341.

32. Ex parte Applicant had offered no explanation as to why he had **not occupied the suit land all those years**. However, the witness who testified for the Ex parte Applicant was one Isaac Mutegi. He said he was occupying plot No. 341. He stated that he surrendered the land to the Ex parte Applicant.

33. As regards plot No. 290, the Ex parte Applicant was asked whether he was utilizing the suit land of which he stated that he was not.

34. I come back to the question as to how the Ex parte Applicant was denied a chance to challenge evidence collected at the scene. What the District Land Adjudication & Settlement Officer found at the scene is that the Ex parte Applicant was not in occupation of the suit land. This was a confirmation of what had emerged during the proceedings and admitted by the Ex parte applicant himself.

35. The averment by the Ex parte Applicant that the rule of natural justice were violated is hence is unfounded. The motion fails on this ground.

36. **Whether the decision of the Respondent was biased and or unreasonable?**

The Ex parte Applicant avers that the 2nd Interested Party being a Chairman of the Land Committee must have influenced the Respondent to arrive at the decision. However, even the way Ex parte Applicant has framed this allegation, it is clear that it is in the realm of speculation. There is no evidence of bias or unreasonableness in the decision making process.

37. **Conclusion**

I conclude that the Judicial Review motion is unmerited. The same is dismissed with costs to Respondent and the Interested Parties. The order of stay of the implementation of the Respondent's decision of 6/5/2011 is hereby vacated.

DELIVERED, DATED AND SIGNED AT MERU THIS 15TH DAY OF NOVEMBER, 2017 IN THE PRESENCE OF:-

CA: Janet/Haway

Kithinji H/B Miss Mutinda for Interested Party

Ashaba H/B for Mwenda Murano for Exparte-Applicant

Hon. L .N. MBUGUA

ELC JUDGE