



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**JUDICIAL REVIEW APPLICATION No. 24 of 2015**

**IN THE MATTER OF:** THE LAW REFORM ACT CAP 26 AND THE LAND CONSOLIDATED AACT, CAP 283, LAWS OF KENYA

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

**BETWEEN**

JACOB MURURU THIRIBI .....EXPARTE APPLICANT

**VERSUS**

THE LAND ADJUDICATION OFFICER

AKAIGA ADJUDICATION SECTION.....1<sup>ST</sup> RESPONDENT

ATTORNEY GENERAL .....2<sup>ND</sup> RESPONDENT

**AND**

PETER KIREMA M'RUKWARU.....INTERESTED PARTY

**JUDGMENT**

1. On 06:10:15 the Ex Applicant obtained leave to bring forth the Judicial Review Motion seeking the following orders:-

- 1) That an order of certiorari do issue, to bring into this Court and quash the proceedings, findings and decision of the 1<sup>st</sup> respondent in Objection No. 1474 in respect of land parcel No. 5530 situated in Akaiga Adjudication Section.
- 2) That an order of mandamus do issue, to order the 1<sup>st</sup> Respondent to reinstate the ex-parte applicant's acreage illegally removed from the register in the ex-parte applicant's account in respect of land parcel No. 5530 situated in Akaiga Adjudication Section.
- 3) That costs of this application and the ex-parte chamber summons for leave be borne by the respondents and interested party jointly and severally.

2. The grounds in support thereof are:-

- 1) That the said Objection was heard without notice to, and in the absence of the ex-parte applicant who was thus unfairly condemned unheard, against the rules of natural justice and rule of law.
- 2) That the 1<sup>st</sup> respondent usurped the statutory powers of Akaiga Adjudication Section's Committee to hear the said objection.
- 3) That the 1<sup>st</sup> respondent breached the ex-parte applicant's legitimate expectations to be accorded a fair and impartial public hearing
- 4) That the 1<sup>st</sup> respondent determined the said objection un-procedurally, irregularly, unreasonably, irrationally, illegally and improperly.

3. Further, the Ex Applicant has sworn an affidavit dated 5:10:15 where he again emphasizes that the dispute was heard without the aid of a Committee, and that he was never summoned or given an opportunity to be heard.

4. The Judicial Review Motion was subsequently filed on 7; 10; 2015.

5. The Interested Party filed a Replying Affidavit averring that the document availed by Ex-parte Applicant (JMT1) is but an undated piece of paper which doesn't prove ownership of land. It is also contended that the Ex-parte Applicant is not in occupation of the land.

6. He further avers that Ex-parte Applicant was not featuring in the objection proceedings N0. 1474.

7. The Interested Party contends that Ex-parte Applicant has not exhausted all available remedies, and that the proceedings in question were conducted in accordance with the law.

8. Finally, the Interested Party avers that the Judicial Review Motion was filed outside the expiry of the relevant period.

9. On 24:04:17, the Court gave directions for the matter to be heard by way of Written Submissions.

10. Both the Exparte Applicant and the Interested Party have filed their Submissions.

11. The Attorney General did not file a response to the Judicial Review Motion nor Submissions despite participating in Court attendances.

## 12. ISSUES FOR DETERMINATION

- 1) Were the proceedings conducted with or without the aid of a Committee?
- 2) Whether the proceedings in Objection No. 1474 were illegal, irregular, irrational and unreasonable.
- 3) Was the suit filed out of time; can the decision be vitiated for want of a date.

## ABSENCE OF A COMMITTEE;

13. Annexure "JMT2" is a copy of the objection proceedings No.1474. It is indicated that the proceedings are conducted under CAP 283 L.O.K.

14. It follows that a Committee is a Mandatory feature in such proceedings pursuant to provisions of Section 26 of the said Act.

15. Nowhere in the said proceedings is there any evidence that a Committee was involved. If there was

such a Committee, why was the Respondent not stating so? What is difficult in availing this information? I can only conclude that there was no Committee in the aforementioned proceedings and this renders the decision of the Respondent null and void.

16. To this end, I find that the case of *Peter Kamandiu v. Land Adjudication Officer Tigania West District & 4 Others (2016)e KLR* cited by Ex-parte Applicant) is relevant.

17. The Judicial Review Motion succeeds, on this ground.

WHETHER THE PROCEEDINGS IN OBJECTION NO. 1474 WERE ILLEGAL, IRREGULAR, IRRATIONAL AND UNREASONABLE

18. The first issue to consider on this point is the Exparte Applicants claim that he was not accorded a fair hearing yet his land was affected. The Exparte Applicant avers that he owns the parcel No. 5530 at Akaiga Land Adjudication Section and has availed a document, to that effect. The Interested Party states that this is a mere piece of paper.

19. I am alive to the fact that the documents of ownership possessed by claimants of land in adjudication Sections are booklets. The records of ownership or claims to rights are kept by the Respondent.

20. The Respondent was aware of the present claim and all documents availed herein. Why then didn't the Respondent dispute the authenticity of the document of ownership availed by Ex-parte Applicant? I have no reason to doubt the said document in absence of any comment from the Respondent.

21. The Objection Proceedings indicate that the dispute was on parcel No. 2131 and 430. The objector was Peter Kirema while Respondent was Jason Kagwika.

22. In the findings of the Respondent it was stated as follows:-

**“I perused the records and in that gathering found the following P/No. 530, 1949, 4767, 3537, 9417, 1440, 7396, 6697, 845, 473 and ½ of 4644. These parcels numbers are Sub-divisions of 430, 2016 and 2131 which are the original numbers in the gathering so since this matter appear on the disputed lands they hence been included in the case”.**

23. The decision itself reads as follows:-

**“Objection No. 1474 is allowed mentioned and the Objector to be awarded 8:60 acres on the disputed lands with parcel No. 5530, 9417, 7396, 1440, 6691, are cancelled No. 3537, 845, 4764, 4708, 4738 and 4644 and any other parcel number within the gathering are moved to original sites, records to be implemented lands surveyor to implement on the ground with immediate effect**

24. The findings are surely not in tandem with the decision. For instance, one cannot tell why the records for title numbers 5530 and 6691 are cancelled yet they are not captured in the findings.

25. It is also extremely difficult to understand the decision itself. This is something I had noted in Judicial Review case No. 27 of 2015 (where I delivered judgment in November 2017), whereby another complainant had filed a similar case in respect of the Objection proceedings no. 1474 Akaiga Adjudication section. It is quite apparent that with the kind of decision delivered by the Respondent in OB 1474, there was bound to be an avalanche of protests as this is a decision that lacks logic.

26. I am inclined to believe that the decision was irregular and irrational and unreasonable.

WAS THE SUIT FILED OUT OF TIME; CAN THE DECISION BE VITIATED FOR WANT OF A DATE.

27. The decision itself has no date. The first page of the proceedings bears the date of 09:01:15. On this issue, the Interested party has submitted as follows:-

**“... It has not inconvenienced any party in taking any procedural step; it has not inconvenienced the parties in appearing at the time of delivering the Order; it is not darkly suggested that the order was not in fact given. It is simply an irregularity which embarrassed no one, and cannot be dressed up to the extent of vitiating the Order”.**

28. The Interested Party is hence admitting that the decision has no date and the Court should not invalidate the decision on that account. On that note, the Interested Party is estopped from claiming that the Judicial Review Motion was brought forth outside the statutory period.

29. I will say no more on this issue.

## **CONCLUSION**

30. The Judicial Review Motion is merited and I proceed to grant orders as follows.

**1. That an order of certiorari do issue, to bring into this Court and quash the proceedings, findings and decision of the 1<sup>st</sup> respondent in Objection No. 1474 in respect of land parcel No. 55 situated in Akaiga Adjudication Section.**

**2. The decision is remitted back to the Respondent to be heard in compliance with the law and the rules of natural justice.**

**3. Each party to bear their own costs of the suit.**

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 19<sup>TH</sup> DAY OF DECEMBER, 2017 IN THE PRESENCE OF:-**

CA: Janet

Ndubi H/B for Ngunjiri for Interested Party present

B.J Kariuki H/B for Kimathi E. for Exparte Applicant present

Attorney General for Respondent absent

**Hon. L. N. MBUGUA**

**ELC JUDGE**