



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**PETITION NO. 24 OF 2012**

**ANDREW MEME.....APPLICANT**

**VERSUS**

**DISTRICT COMMISSIONER IGEMBE SOUTH DISTRICT.....1<sup>ST</sup> RESPONDENT**

**MINISTER FOR LANDS & SETTLEMENT.....2<sup>ND</sup> RESPONDENT**

**DLASO IGEMBE SOUTH DISTRICT.....3<sup>RD</sup> RESPONDENT**

**DANIEL MURUGI.....INTERESTED PARTY**

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**JUDGMENT**

**BACKGROUND**

1. The dispute arose herein during the adjudication process concerning parcel No. 3039 in Kirindine 'A' Adjudication Section. There were objection proceedings filed in A/R No. 249 where the claimant was one Stanley Nkubitu whereas the present Respondent, Andrew Meme was still the Respondent. When the case was heard Stanley lost and he lodged an Appeal before the Minister in Case No, 70 of 1999. A decision was given on 07.09.11. By then Stanley had died. His son, Daniel Murungi stepped in. He is the present Interested Party.
2. The decision of the minister was in favour of the Appellant.
3. Respondent was aggrieved by this decision. He therefore filed this petition.
4. The petition herein dated 29.11.12 has no date of filing. An application dated 05.12.12 (with white out cancellations) and filed on same date is also on record. In that application the petitioner was asking the Court to issue orders stopping the implementation of the award / verdict of the Minister in Case No. 70 of 1999 dated 07.09.11 pending the hearing and determination of the petition.
5. Interim orders were issued on 07.12.12. Thereafter, the orders were extended on 13.03.13, then 10.06.13, 29.08.13 and up to 30.10.13, when the said orders appear to have lapsed.
6. For one reason or another, the case has taken long in the Court corridors. The application filed on 05.12.12 remained pending for many years (close to five years) until 08.05.17 when this Court gave directions for the application to be abandoned in lieu of hearing the main petition.

7. Further, the Court also gave directions for the main petition to be heard by way of Written Submissions. Such submissions have since been filed.

### PETITIONER'S CASE

8. The Petitioner's case is that he got Parcel No. 3039 Kirindine Adjudication Section from his father who had inherited this land from his father (Petitioners Grandfather). However the Interested Party's father (Stanley Nkumbitu deceased) acquired the said land via sale from one Mugambi. Then the Petitioner got the same land back via a committee case on 22/04/1987.

9. The Interested Party's father (now deceased) had then lodged objection No. 249 of 1998 before the Land Adjudication Officer of the Meru North District. The verdict in above matter resolved that the land belonged to the Petitioner herein.

10. The Interested Party's father had then lodge appeal to the Minister No. 70 of 1999 which was heard exparte on 30/08/2011 and verdict made on 07:09:2011, whereby, the land was given to Stanley Nkumbitu who had died on 11/06/2011.

11. The Petitioner avers that he had had written on 29/08/2011 to inform the 1<sup>st</sup> Respondent that the said Appellant had died and the matter could not proceed without a legal representative being appointed, however on 30/08/2011 the said Respondent proceeded in disregard of the same, and without hearing the Petitioner.

12. The decision is not only unfair but a nullity for breach of law and the constitutional right provisions on fair hearing.

13. That on 04:07:2011 the Petitioner had also informed the 1<sup>st</sup> Respondent of a similar case before Maua Court which was dealing with the same subject Maua CMCC 96 of 2001.

14. The 3<sup>rd</sup> Respondent had also apparently indicated vide letter dated 07:04:2003 that the land was registered in Petitioners names.

15. The Respondents are now in the process of implementing the 1<sup>st</sup> Respondent's verdict and the Petitioner will be evicted and lose land and all his developments without any compensation.

16. The 1<sup>st</sup> Respondent decision is meritless, devoid of any substance legal or otherwise, illegal and unconstitutional, annulity and contrary to the provisions of Article 10, (2) (b), 40(1), 50 (1) 159 (2) (a) (e) of the Constitution.

### CASE FOR THE INTERESTED PARTY

17. The case for the Interested Party is captured in his Replying Affidavit filed in Court on 14.8.13. It is rather detailed. In essence, the Interested Party gives a historical account of the ownership of the suit land.

18. What the Interested Party avers is that the land parcel No. 3039 belonged to the family of the Interested Party whereby the petitioner was their neighbour from time immemorial and his land parcel was No. 2895.

19. The Interested Party avers that his father Stanley had realised that his land had been taken away by the petitioner and so he lodged a committee case on 22.04.1987 and the committee ruled in favour of the petitioner.

20. The petitioner had then destroyed the crops of Stanley and the latter had filed a Civil Case No. 96 of 2001 before Maua Court. Stanley had also lodged an A/R Objection No. 249 of 1998 before the Land

Adjudication Officer, Meru North District and he lost.

21. It is then that Stanley lodged an Appeal to the Minister whereby Stanley won the case.

22. The Interested Party contends that the decision of the Minister was merited and no constitutional provisions have been violated.

### CASE FOR THE RESPONDENT

23. The case for the Respondent is captured in the Replying Affidavit of P.M. Munyalo filed on 14.10.13. He is the District Lands Adjudication and Settlement Officer Igembe South District (3<sup>rd</sup> Respondent).

24. 3<sup>rd</sup> Respondent claims that parcel No. 3039 in Kirindine 'A' Adjudication Section was originally 2375 before the Adjudication Section was split into Kirindine 'A' and Kirindine 'B' Adjudication Section.

25. That Parcel No. 2375 was the subject of a land Committee case No. 3320/93 filed by Bernard M'itaru against Stanley Nkubitu in which Mr. Bernard M'itaru won the committee case. This matter was heard in accordance with section 20(a) of the Land Adjudication Act. See annexed proceedings attached herein and marked 'PMM'1.

26. That upon publication of the complete adjudication register for Kirindine 'A' Adjudication Section in accordance with Section 25(c) and 26 (1) of the same Act, Mr. Stanley Nkubitu, Akwalu filed objection No. 249 against Andrew Meme on parcel No. 3039. Again Mr. Andrew Meme M'Mwereria won the objection decided by the Land Adjudication Officer in accordance with section 26 (2) of the Land Adjudication Act. See annexed proceedings attached herein and marked 'PMM'2.

27. That Mr. Stanley Nkubitu filed an Appeal to the Minister case No. 70 of 1999 in accordance with section 29(1) of the Act. The Minister decided the appeal on 7<sup>th</sup> September, 2011. See annexed proceedings attached herein and marked 'PMM'3.

28. That upon receipt of the Ministers decision, the Director of Land Adjudication in exercise of powers conferred to her section 29(3) (b) of the same Act sent the order to implement the decision to the Chief Land Registrar vide a letter reference No. APP/4/2 VOL. LXI of 15<sup>th</sup> September 2011. See also a copy of duplicate Adjudication record part 15 amended following the Ministers decision of 7<sup>th</sup> September, 2011 attached herein and marked 'PMM'4.

29. That the appeal was properly before the Minister and was obliged to make a ruling, which ruling was in compliance with the law set forth under section 29 of the Land Adjudication Act.

30. That the Minister through District Commissioner under his findings explained how the respondent (present petitioner) tried to delay the case by instructing his Advocate to stop the hearing of the case. The District Commissioner explained his reasons for hearing and determining the matter. See annexed proceedings attached herein and marked 'PMM'3.

### DETERMINATION

31. I have weighed all arguments raised herein including the submissions, and authorities. I find that the issues for determination are:-

**1. Whether the petition meets the threshold of a constitutional petition.**

**2. Whether the Court should declare the decision of the Minister in Appeal No. 70 of 2009 dated 07.09.11 as null and void.**

## DOES THE PETITION MEET THE THRESHOLD OF A CONSTITUTIONAL PETITION?

32. It has been submitted for the petitioner that the 1<sup>st</sup> Respondent violated the constitutional provisions under Article 10 (2) (b), 40 (1), 50 (1), 159 (2) (a) (e).

33. Petitioner also avers that the petition has met the threshold set out in the *Anarita Karimi Njeru Case*. Further, the petitioner avers that under Article 22 of the constitution, every person has a right to move to the High Court to enforce fundamental rights enshrined in the Bill of Rights.

34. A scrutiny of the petition and supporting documents reveals that the petitioner's complaint to the 1<sup>st</sup> respondent was document which is a letter of 29.08.11 where the petitioner was informing the 1<sup>st</sup> respondent that Stanley Nkubitu had died on 11.06.11.

35. In a subsequent letter of 04.07.11, the petitioner was informing the 1<sup>st</sup> respondent that there existed a Maua Case No. 96 of 2001.

36. Further, the petitioner was averring that in a letter of 07.04.03, they had informed the 1<sup>st</sup> respondent that the petitioner was the registered owner of the land.

37. In essence, the petitioner had sought to halt the dispute Resolution Mechanism process provided under the applicable law before the Minister. Are there any constitutional or statutory provisions that were violated when the minister proceeded to hear the dispute? Certainly not. What is apparent is that the petitioner was unhappy with the decision making process. I am in agreement with the respondent's contention that the petitioner ought to have sought redress in the ambit of Judicial Review proceedings.

38. I am inclined to believe that the petition does not meet the threshold in the *John Kipngeno Koech & 2 Others Vs Nakuru County Assembly & 5 Others (2013) KLR* and the *Anarita Karimi Njeru case* where it was held that a petitioner needs to establish that a constitutional or Statutory right has been violated.

39. Should I dismiss the petition then? Having stated that the petitioner should have approached the Court, by way of judicial Review, I am now alive to the fact that such a step cannot now be undertaken due to lapse of time. The dispute has been in Court for a very long time.

40. Pursuant to the provisions of Article 159 of the Constitution, this Court has a mandate to ensure that justice is exercised in a manner that is expeditious and without handles of procedural technicalities.

I will therefore proceed to determine the second issue.

## WHETHER THE DECISION OF THE MINISTER IN CASE NO. 70 OF 2009 SHOULD BE DECLARED NULL AND VOID.

41. The first issue is on the deliberation of the case by the Minister when the appellant Stanley Nkubitu had already died on 11.08.11.

42. I find that the Minister was conducting the proceedings under Cap 284 where it is provided that it is **"An act of Parliament to provide for the ascertainment and recording of rights and interests in Trust Land, and for purposes connected therewith and purposes incidental thereto"**.

43. In **HCCC NO. 4 OF 2011 AT KISII TOBIAS ACHOLA OSIDI & 13 OTHERS VS. CYPRIANCES OTIENO OGALO & 6 OTHERS.....OKONG'O J.** held that:-

**"A claim for an interest in land made under the Land Adjudication Act, Cap. 284, Laws of Kenya, following the declaration of an area as an Adjudication Area or an Adjudication Section cannot be equated to a claim before this court. A claim under the Act pursuant to**

**section 13 thereof can be made by “every person who considers that he has an interest in land within an adjudication section”. A claim under section 13 of the Act can be made by successors of a deceased person and not necessarily the deceased’s legal representatives.”**

44. It follows that the petitioner had no basis of trying to halt the Dispute Resolution Mechanism process under cap 284 on the basis that Stanley was dead.

45. The other issue that the petitioner was raising was with regard to the existence of the Civil Case No. CMCC NO. 96 OF 2001 at Maua. However, the decision of 7.9.11 did make reference to this case where it was stated that:-

**“the civil case No. 96 of 2001 between the two parties was for malicious damage and the appellant had already appealed to the Minister in 1999”**

46. The petitioner has not controverted this averment. The proceedings of the Case No. 96 of 2001 availed by the petitioner have very scanty information. I therefore find that the decision of the Minister cannot be challenged on this ground.

47. The 3<sup>rd</sup> issue to consider is the complaint that the land was already registered under Cap 300 and so the Minister had no jurisdiction to deal with the matter.

48. The applicant in his further affidavit of 25.7.17 avers that the title had already passed to him on 01.03.04. He availed a Search Certificate to that effect. Indeed this document shows that Andrew Meme M’Mwereria was registered as the owner of the suit land on 1.3.04 and a title was issued on 01.03.04.

49. However, it is also quite apparent that Stanley Nkubitu had filed an appeal to the Minister in Case No. 70 of 1999. The Appeal was against the decision in A/R 249 delivered on 9.2.1998.

50. The process of Appeal to the Minister is anchored under the statute Cap 284 Section 29. Since the Appeal was not finalized until 07.09.11, then any other processes including change in the registers could not have ousted the application of the law under Cap 284.

51. It was therefore correct for the Minister to rule that the dispute was governed by Cap 284 and not Cap 300.

52. The forth issue that has been raised is that the proceedings were conducted ex-parte and hence the petitioner denied a fair hearing. However, it is quite apparent that the petitioner was aware of the appeal. What the petitioner did not want is for the appeal to proceed. In the findings of the Minister’s decision, it is noted that the petitioner had been served with the summons to appear before the Minister but instead, he instructed an Advocate to stop the case. The Minister had even postponed the case from 28.06.11 to 30.08.11 to enable the respondent to appear but he failed to appear.

53.. The Minister had also taken note of the long period this matter had been in a pending status when he stated that.

**“Appeal to the Minister for Kirindine ‘A’ Adjudication Section has been pending for twelve (12) years and the Court would like to determine the case, without unnecessary delay.”**

54. Against this background, the petitioner cannot claim that he was not given a fair hearing.

## CONCLUSION

55. I find that the petitioner has not laid a basis for writing the letters of 29.08.11, 04.07.11 and any other such letters. I have combed through Cap 284. I have not come across a situation where a party or anyone else had a mandate to direct the manner in which an Appeal to the Minister was to be conducted other than what is provided for under Section 29 of the Act.

56. The petition fails and I proceed to give the following orders:-

**1. The petition dated 29.11.12 is hereby dismissed with costs to the Interested Party and the Respondent.**

**2. Any interim orders that may be existing stopping the implementation of the verdict in Appeal to the Minister Case No. 70 of 1999 dated 7.9.11 are hereby vacated.**

**DATED, SIGNED AND DELIVERED AT MERU THIS 13<sup>TH</sup> DAY OF DECEMBER, 2017 IN THE PRESENCE OF:-**

CA Janet

Kiome for Petitioner present

Kiango for respondent present

Daniel Muriungi for Interested Party (in person present)

**Hon. L. N. MBUGUA**

**ELC JUDGE**