



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

**JUDICIAL REVIEW APPLICATION NO. 26 OF 2016**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW OF CERTIORARI**

**AND**

**IN THE MATTER OF L.R. NO. ANKAMIA 6536 ANKAMIA ADJUDICATION SECTION**

**KINYUA SAMSON MUGAA .....**  
**.....APPLICANT**

**VERSUS**

**THE LAND ADJUDICATION ANDSETTLEMENT OFFICER TIGANIA EAST.....1<sup>ST</sup>**  
**RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL.....2<sup>ND</sup>**  
**RESPONDENT**

**SOLOMON BAARIU.....**  
**INTERESTED PARTY**

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**JUDGMENT**

The Ex parte Applicant filed the Judicial Review motion on 2.9.16 seeking for orders that this Court be pleased to issue an order of Certiorari to quash the 1<sup>st</sup> Respondent’s Ruling of 21.4.16 in Objection Case No. 1090 of Ankamia Adjudication Section.

The grounds in support of the motion are that the Applicant was not involved in the objection proceedings yet it is his land which was in question.

He avers that the Respondent’s action of removing the Applicant from his land where he has developed was an abuse of the due process and a sign of biasness against the Applicant.

It is also averred that the Respondent did not have jurisdiction to hear the case.

The case is opposed by the Interested Party while the Respondents did not file any response to the motion. What the state Counsel told the Court is that they would be associating themselves with submissions of the Interested Party.

The matter was heard by way of written submissions.

### **CASE FOR EX-PARTE APPLICANT**

In his affidavit of 2.9.16, the Ex-parte Applicant avers that he is the registered owner of parcel No, 6536 Ankamia Adjudication Section which is one acre. He bought the land about 15 years ago and he settled on it.

The Ex-parte Applicant avers that in a ruling made on 21.4.16 it was ordered that the Interested Party was to be given part of the Ex-parte Applicant's land and that he (Ex parte applicant) was to be moved to await allocation to another site.

The Ex-parte applicant has annexed the proceedings of the objection case.

### **INTERESTED PARTY'S CASE**

The interested party avers that the Ex-parte Applicant was not a party to the proceedings but that the decision of the Land Adjudication Officer was to be implemented immediately.

He also avers that anyone aggrieved ought to have filed an Appeal and that the Ex-parte Applicant did not comply with Section 30 of the Land Adjudication Act in instituting this case.

During the lifespan of the case, this Court gave directions that each party was to remain on the portions of land they were occupying.

### **DETERMINATION**

The issues for determination are as follows:-

- 1. Whether the Rules of Natural Justice were violated as Ex-parte Applicant was denied an opportunity to be heard.**
- 2. Whether the Respondent's decision was biased.**
- 3. Whether the Respondent's decision is null and void for want of jurisdiction as decision was made without a committee.**

### **VIOLATION OF RULES OF NATURAL JUSTICE**

It is contended that the Ex-parte Applicant was not a party to the Objection proceedings yet his land was affected.

I find that the AR Objection proceedings were in Case No. 1690 for Parcel No. 729. The Objection Case cited by the Ex-parte Applicant is 1090. The Ex-parte Applicant filed a further affidavit of 6.4.17 where he had an opportunity to make a clarification or correction. He made none of these.

The proceedings annexed by the Ex-parte Applicant are rather faint. A fairer copy is the one availed by the Interested Party. Looking at the annexures, this may be a case of a typing error made by the Ex-parte Applicant whereby he was actually referring to Case No. 1690.

In the proceedings of 1690, it is indeed true that the Ex-parte Applicant was not a party. I have however scrutinized the final order and found that the plaintiff in the Objection proceedings had lodged a claim in respect of Parcel No. 729.

However, on the ground it had been found that the ground measurement had to be authenticated and this was done via a field visit. It is not just the Applicant's land which was affected, but also many other

parcels of other persons i.e. **Mtuambu M'Araru** and **Teresia Ncabari**.

The Respondent has also supported his decision with a Sketch Map.

I find that the Land Adjudication Officer's decision was well grounded as this was a process of ascertainment of rights and interest in the land. Nowhere in that decision is it indicted that the Ex-parte Applicant's entire land was to be taken away and he was to await the allocation of land elsewhere.

### **WHETHER RESPONDENT'S DECISION WAS BIASED**

It is averred that the decision of the respondent was biased. However, the Ex-parte Applicant has not demonstrated how this claim is justified.

On the other hand, it is quite apparent that many parcels of land belonging to different people were affected but the Land Adjudication Officer has given a justification of his decision.

It was because the measurement on the ground had to be ascertained and aligned to the claims. The main parcel of land No. 729 had also been subdivided. There is hence no evidence of bias.

### **DID THE RESPONDENT CONDUCT THE PROCEEDINGS WITH AID OF A COMMITTEE?**

Certainly, from the findings, it is clear that it is even the committee and the Demarcation Officer who had gone for the scene visit. Even in the implementation of the decision, the committee was to be involved. I am therefore inclined to believe that the Objection proceedings were conducted in accordance with the applicable law which is Section 26 of the Land Consolidation Act (Cap 283).

### **CONCLUSION**

**a) I find that the Judicial Review Motion lacks merits and the same is dismissed with costs to the Interested Party.**

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

**CA: Janet**

Kimathi Kiara for Exparte Applicant

Kiango for Respondent (1<sup>st</sup> & 2<sup>nd</sup>)

Kariuki H/B for Interested Party for Omari Present

**Hon. L. N. MBUGUA**

**ELC JUDGE**