



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT KISUMU
MISC. CASE NO.29 OF 2015

JARED OTIENO ARIDIEXPARTE APPLICANT

(Having beneficial interest)

VERSUS

**DISTRICT ADJUDICATION AND SETTLEMENT OFFICE BOND AND
RARIEDA.....RESPONDENT**

RULING

1. Jared Otieno Aridi, the exparte Applicant, filed the notice of motion dated 19th March 2015 against **District Adjudication and Settlement Officer Bond and Rarienda**, the Respondent, seeking for leave to apply for an order of mandamus to compel the Respondent to give him consent to sue and disclose details concerning the creation of parcels **Nyamonye/Abidha village/1683, 1685 and 2417**. The application invokes **order 53 Rules 1 to 4 of the Civil Procedure Rules** and **Section 3A of the Civil Procedure Act**. It is based on the ground that the Respondent has illegally withheld information and their refusal to disclose the details sought and to grant consent to sue is an infringement of the Applicant's right to information as enshrined in the Bill of Rights in **Chapter 4 of the Constitution**. The application is supported by the Applicant's affidavit sworn on 19th March 2015 and the statement of facts.

2. The Exparte Applicant served the Notice of Motion and hearing notice on the Respondent who has not filed any papers in response and did not attend the court during the hearing. The application therefore stands unopposed.

3. The court has considered the ground on the application, the affidavit evidence and the statement of facts and has come to the following conclusions:

a) That though the heading of the Notice of Motion is said to be brought pursuant to "**Order LIII Rules 1, 2, 3, 4 ...**" among others, the Civil Procedure Rules were amended under L.N.151/2010 removing the Roman references. The correct reference of **Order LIII** should therefore be **Order 53**.

b) That the Exparte Applicant seeks the leave to file for an order of mandamus to compel; the respondent to give him consent to sue and to disclose details concerning the three parcels of land. The **Constitution 2010 at Article 35** provides for the right of access to information as follows:

" **35 (i) Every citizen has the right of access to-**

a) **information held by the state; and**

b) **information held by another person and required for the exercise or protection of any right or fundamental freedom.**

(2)

(3)"

The issue of consent to sue is provided for **Under Section 30 of the Land Adjudication Act, Chapter 284 and Section 8 of the Land Consolidation Act, Chapter 283 of Laws of Kenya.**

The rights and fundamental freedoms are not to be limited except as provided for under **Article 24 of the Constitution.** The court therefore find that the Exparte Applicant should be granted leave to file a substantive application for mandamus to compel the Respondent to disclose the details relating to adjudication, demarcation and registration of **Nyamonye/Abidha/1683,1685 and 2417** and further to give consent to the Exparte Applicant to sue on the said parcels.

4. That the notice of motion dated 19th March 2015 is hereby granted in terms of prayer (1) with costs to abide the outcome of the substantive application.

It is so ordered.

SM. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 13TH DAY OF APRIL 2016

In presence of;

Exparte Applicant present

Respondent Absent

Counsel Mr Dola Ludidia for Applicant

SM. KIBUNJA

ENVIRONMENT & LAND – JUDGE

13/4/2016

13/4/2016

S.M. Kibunja J.

Applicant present

Dola ludidis for Applicant

Court: Ruling delivered in open court in presence of Mr Dola Ludidis for Applicant and the Applicant.

SM. KIBUNJA

ENVIRONMENT & LAND – JUDGE

13/4/2016