



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

MISC JUDICIAL REVIEW APPLICATION NO. 5 OF 2016

IN THE MATTER OF THE IRRIGATION ACT CAP 347 LAWS OF KENYA

AND

IN THE MATTER OF MWEA SETTLEMENT SCHEME

AND

IN THE MATTER OF MWEA SETTLEMENT SCHEME ADVISORY COMMITTEE

AND

IN THE MATTER OF RICE HOLDING NO. 1487 C OF MWEA SETTLEMENT SCHEME

AND

**IN THE MATTER OF AN APPLICATION FOR ORDER OF CERTIORARI AGAINST THE
AWARD OF MWEA SETTLEMENT SCHEME ADVISORY COMMITTEE DATED 22/6/2016
BY JUDY WACERA MWANGI**

REPUBLIC.....APPLICANT

VERSUS

THE NATIONAL IRRIGATION BOARD Through

THE MANAGER MWEA SETTLEMENT SCHEME.....RESPONDENT

ESTHER NDUNGE.....INTERESTED PARTY

SAMUEL GACHOKI MURIUKI.....EX-PARTE APPLICANT

RULING

The Ex-parte Applicant herein **SAMUEL GACHOKI MURIUKI** has by his Chamber Summons dated 16th August 2016 sought leave to being into this Court and quash the verdict of the Respondent dated 22nd June 2016 in respect of rice holding No. 1487 A.

It is the Ex-parte Applicant’s case that he and his co-licenceses **JUDY WACERA MWANGI** and **ANTHONY KINYUA WARUI** are the licenceses of rice holding No. 1487 A measuring 1½ acres. However, the Interested party and her family lodged a claim with the Respondent who made a decision on

22nd June 2016 terminating his licence and granting the rice holding to the Interested party.

It is the Ex-parte Applicant's case that he has not contravened the provisions of the ***Irrigation Act*** to warrant cancellation of his licence and in any event, the Respondent has no powers to do so and in so doing, violated his rights as a tenant. In arguing the application, his counsel **Mr. KIAMA** argued that the cancellation of the Ex-parte Applicant's licence was done without reasons.

I have considered the application, the statement of facts and other annexures thereto.

It cannot of course be true, as pleaded by the Applicant, that the Respondent's Advisory Committee lacks the jurisdiction to cancel the licence issued under the ***Irrigation Act***. The ***Irrigation (National Irrigation Schemes) Regulations*** made under the ***Irrigation Act*** clearly stipulate that the Respondent has powers to issue and terminate licences. However, there are conditions stipulated in the ***Irrigation Regulations*** governing when such licences can be terminated. If indeed it is true that the termination of the Ex-parte Applicant's licence was done without regard to the provisions of the Act or for no reasons, then this Court will be obliged to intervene. Should it also be correct, as alleged, that the Applicant did not contravene any provisions of the law to warrant the cancellation of his licence, then a prima facie case is made out to warrant the orders sought.

From the above, I am satisfied that the Ex-parte Applicant has established good grounds for the grant of leave to institute Judicial Review proceedings against the Respondent and I hereby direct, in accordance with ***Rule 3 (1) of Order 53 of the Civil Procedure Rules*** that the Notice of Motion be filed within 21 days hereof. I further direct that the said Notice of Motion be served upon the Respondent, the Interested party and all other such persons as may be affected by it within 14 days of filing. The Applicant shall also file an affidavit stating who has been served with the said Notice of Motion.

As the licence has already been terminated, I do not see what purpose will be served by ordering a stay and I decline to issue such orders.

Costs shall be in the Notice of Motion.

Further, I notice that this application together with Miscellaneous Judicial Review Application Numbers 4 and 6 of 2016 arise out of the same proceedings in that they relate to the same Respondent, Interested party and rice holding. At the appropriate time, there may be a need to have them consolidated.

B.N. OLAO

JUDGE

14TH OCTOBER, 2016

Ruling dated, delivered and signed in open Court this 14th day of October 2016

Mr. Kihara for Mr. Kinyua for the Applicant present

Mr. Gichia Court Clerk present.

B.N. OLAO

JUDGE

14TH OCTOBER, 2016