



**REPUBLIC OF KENYA**

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

**ELC JUDICIAL REVIEW APPL.NO.22 OF 2013**

**IN THE MATTER OF AN APPLICATION BY ALEX OCHIENG APPLICANT**

**UNDER THE LAW REFORM ACT AND UNDER ORDER 53 OF THE CIVIL; PROCEDURE RULES**

**AND**

**IN THE MATTER OF THE LAND REGISTERED ACT, 2012 AND THE LAND ACT, 2012.**

**THE REPUBLIC (EX-PARTE)**

**THROUGH ALEX OCHIENG APUNDA.....EXPARTE APPLICANT**

**VERSUS**

**KISUMU INTER-LOCATIONAL**

**LAND DISPUTE APPEALS COMMITTEE (NYAMTHOYO).....1<sup>ST</sup> RESPONDENT**

**THE DISTRICT COMMISSIONER KISUMU WEST DISTRICT.....2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**NORBETUS NYAMBOK ODAA.....1<sup>ST</sup> T INTERESTED PARTY**

**BENARD OBUYA OYOKO.....2<sup>ND</sup> INTERESTED PARTY**

**JUDGMENT**

1. **Alex Ochieng Apunda**, the Exparte Applicant , through the notice of motion dated 16<sup>th</sup> December 2013, seeks for orders of certiorari and prohibition in respect of the award of Kisumu Inter-locational Land Disputes Appeal Committee (Nyamthoi) dated 16<sup>th</sup> April 2013 in respect of the unsurveyed land situated at Nyamthoyi, East Kolwa location, Kisumu County. The application is brought against

Kisumu Inter-locational **Land Disputes Appeals Committee** (Nyamthoi), **District Commissioner Kisumu West District, The Attorney General**, referred to as 1<sup>st</sup> to 3<sup>rd</sup> Respondent **plus Norbetus Nyambok Odaa and Benard Obuya Oyoko**, hereinafter referred to as the 1<sup>st</sup> and 2<sup>nd</sup> Interested Party. The application is based on the statement of facts and verifying affidavit.

2. The Deputy Chief litigation counsel entered appearance for the 3<sup>rd</sup> Respondent through the memo dated 3<sup>rd</sup> April 2014.

3. The Interested Parties opposed the notice of motion through their replying affidavit.

4. The proceedings of 2<sup>nd</sup> March 2015 shows that M/S Eredi for the Respondents conceded to the application. Then on the 21<sup>st</sup> September 2015, Mr Otieno for Oyuko for the Interested Parties and Mr. Omollo for the Exparte Applicant agreed to file written submission on the notice of motion. The Exparte

Applicant filed their submission dated 4<sup>th</sup> February 2016 on 8<sup>th</sup> February 2016 while Interested Parties filed theirs dated 26<sup>th</sup> January 2016 on 13<sup>th</sup> September 2016.

5. The issues for determination by the court are as follows;

- a) Whether the decisions of the 1<sup>st</sup> Respondent are subject to judicial review orders.
- b) Whether the decision subject matter of the notice was a decision on appeal or review.
- c) Whether the decision subject matter of this proceedings was ultra vires their jurisdiction.
- d) Whether the 1<sup>st</sup> Respondent accorded all the parties before it a fair hearing.
- e) What orders to issue.

6. The court has considered the grounds on the notice of motion, statement of

facts, affidavit evidence, the rival written submissions and come to the following determinations;

a) That the 1<sup>st</sup> Respondent appear to be a creation of the Local Administration and is clothed with powers to listen and decide on land use and other related disputes between the residents of the area. That its decision appear to be implementable through the local administration and are therefore amenable to judicial review proceedings.

b) That in view of the finding in (a) above, the 1<sup>st</sup> Respondent has an obligation to ensure all the parties before it are granted a fair hearing to present their cases before a decision is made. That the Exparte Applicant's main complaint is that the same members who heard the initial dispute and made a ruling in his favour, later sat as an appeals committee on their own decision and overturned it without giving him a hearing. He further indicated that the chairman, Mr. Gabriel Atieno, had died in December 2012 yet he is indicated to have appended his signature in the appeals decision of 16<sup>th</sup> April 2013. That the Interested Parties, position is that the record of the initial proceedings and award was interfered with to award the Exparte Applicant more land than the Committee had actually awarded him. That when this was realized and brought to the attention of the Committee, they sat again and reviewed their decision and that all parties including, the Exparte Applicant, were involved. That the scenario described by both the Exparte Applicant and the Interested parties leads the court to find that the records of the 1<sup>st</sup> Respondent on the initial determination of 18<sup>th</sup> June 2010 and the review decision of 16<sup>th</sup> April 2013 are both questionable and unreliable.

c) That a copy of the award dated 16<sup>th</sup> April 2013 is clearly, headed **“Decision/ruling Report**

**(Reviewed)**” and at clause 2 the Committee observed as follows:

“Secondly, the Committee erred in law and fact by misdirecting itself to deliver a defective report under the pretext of “THE MAJORITY RULE WINS” (VOTING) **after part of the original Ruling report was deleted and replaced with false information** ..... “ (emphasize mine). That this renders credence to the Interested Parties contention that the award of 18<sup>th</sup> June 2010 had been interfered with and therefore did not reflect the decision of the 1<sup>st</sup> Respondent and hence the appeal (review) proceedings.

d) That should the court allow the quashing of the decision of 16<sup>th</sup> April 2013, then the parties will have to revert back to the earlier award of 18<sup>th</sup> June 2010, which the Committee observed did not reflect their correct decision as some portions of it had been deleted and others added. That the court has not been presented with the copy of the award that has been agreed to have been the genuine award. That from the foregoing the court is of the view that the parties dispute need to be heard **a fresh** by a committee consisting of different members from those that heard the dispute and appeal and or review proceedings earlier leading to the awards of 18<sup>th</sup> June 2010 and 16<sup>th</sup> April 2013.

7) That in view of the foregoing the court issues an order of certiorari and calls to this court the awards of 18<sup>th</sup> June 2010 and review (appeal) decision of 16<sup>th</sup> April 2013 for quashing. That the parties are at liberty to present their dispute to a differently constituted committee and or forum for hearing in accordance with the law. That each party do bear their own costs.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

DATED AND DELIVERED THIS 30<sup>TH</sup> DAY OF NOVEMBER 2016

In presence of;

Exparte Applicant	Present
Respondents	Absent
Interested parties	Absent
Counsel	Mr Odhiambo for Omollo for Exparte Applicant

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**30/11/2016**

**30/11/2016**

**S.M. Kibunja Judge**

**Oyugi Court assistant**

**Exparte applicant present**

**Mr Odhiambo for Ken Omollo for Exparte Applicant**

**Court: Judgment delivered and dated in open court in presence of Exparte Applicant and Mr Odhiambo for Ken Omollo for Exparte Applicant.**

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**30/11/2016**