



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KERUGOYA
JUDICIAL REVIEW APPLICATION NO. 6 OF 2015
IN THE MATTER OF MWEA IRRIGATION SETTLEMENT
SCHEME ADVISORY SUB-COMMITTEE HEARING ON
RICE HOLDING NO. 1972 MWEA SECTION UNIT M15
REPUBLIC.....APPLICANT
VERSUS
THE NATIONAL IRRIGATION BOARD.....1ST RESPONDENT
MWEA IRRIGATION SETTLEMENT SCHEME.....2ND RESPONDENT
AND
FELICITA MICERE CUBI.....1ST INTERESTED PARTY
SYMON MUTHEE CUBI.....2ND INTERESTED PARTY
PETER MUTHIKE CUBI.....3RD INTERESTED PARTY
AND
CHUBI KANGANGI.....EX-PARTE APPLICANT

RULING

On 18th December 2015, following leave granted by this Court on 4th December 2015, the Ex-parte Applicant moved this Court by his Notice of Motion seeking the following Judicial Review remedies:-

- 1. An order of certiorari to remove to this Court and quash the decision of the Respondents dated 10th July 2015 in respect of rice holding number 1972 Mwea Section Unit M15***
- 2. An order of prohibition against the Respondents prohibiting them from in any way unlawfully altering the ownership records in the Ex-parte Applicant's names in respect of the said rice holding number 1972 Mwea Section Unit M15.***

3. Costs of the application be provided for.

The grounds upon which the said Notice of Motion are premised are not relevant for the purposes of this ruling. What is important and is the subject of this ruling is that on 23rd May 2016, the Ex-parte Applicant filed another Notice of Motion premised under **Order 40 Rule 1 of the Civil Procedure Rules 2010** seeking the main prayer that:-

1. Spent.

2. Spent.

3. This Honourable Court be pleased to issue a temporary injunction restraining the 1st, 2nd and 3rd Interested parties/Respondents by themselves, their servants, employees, agents and/or any body else claiming through them from entering, cultivating, or in any other way interfering with rice holding number 1972 Mwea Section Unit M15 pending the hearing and determination of this suit.

4. That the costs of this application be provided for.

The application is supported by the affidavit of the Ex-parte Applicant **CHUBI KANGANGI** and based on the grounds set out therein. In brief, the Ex-parte Applicant's case is that he is the lawful tenant and licensee of the rice holding number 1972 Mwea Section Unit M15 (the rice holding). However, on 9th July 2015, he was summoned by the Scheme Manager Mwea Irrigation Scheme to appear before its Disputes Arbitration Committee where he learnt that the Interested parties were demanding a share of the rice holding. He did not accept those demands and they were told to go home and await the Committee's decision. The decision never came and after some days, he discovered that a stranger namely **SAMSON KINYUA KATHAGO** had leased the rice holding. So he went to **WANGURU COURT** vide **PRINCIPAL MAGISTRATE CIVIL CASE No. 84 of 2015** to file an application for injunction and later obtained leave vide **KERUGOYA ENVIRONMENT & LAND COURT APPLICATION No. 28 of 2015** to file these Judicial Review Proceedings.

The Interested parties have however continued to forcefully enter and cultivate the rice holding hence this application.

The application is opposed and the 3rd Interested party **PETER MUTHIKE CHUBI** has, with the authority of the 1st and 2nd Interested parties, filed a replying affidavit in which he has deponed that the application is fatally defective, grossly incompetent and offends the mandatory provisions of the law. That the Ex-parte Applicant is father to the 2nd and 3rd Interested parties and husband to the 1st Interested party and is not the licensee of the rice holding a decision which has been communicated to him. That the Interested parties have not leased the rice holding nor interfered with the same.

The application was canvassed by way of written submissions which have been filed by the firm of **MAINA KAGIO** Advocate for the Ex-parte Applicant and **BWONWONGA** Advocate for the 1st, 2nd and 3rd Interested parties. The Respondents did not file any response to the application nor submissions and their counsel **Mr. OMBACHI** informed the Court that they would not be opposing the same.

I have considered the application, the rival affidavits and submissions by counsel for the Ex-parte Applicant and the Interested parties.

It is common knowledge that these are Judicial Review Proceedings. It is now well settled that the remedies available in such proceedings are certiorari, mandamus and prohibition. An order of injunction, temporary or otherwise, is not among the remedies provided for under **Order 53 of the Civil Procedure Rules** which donates to the Court the powers to issue Judicial Review remedies. This application seeking grant of a temporary injunction is grounded upon the provisions of **Order 40 of the Civil Procedure Rules**. Judicial Review proceedings are neither civil nor criminal in nature and the application of the provisions of the **Civil Procedure Rules** would not therefore be permissible in such proceedings. That is

the route that Courts in this country have taken. The remedy of injunction would therefore not be available to the Ex-parte Applicant.

The issue as to whether an injunction can be granted in Judicial Review Proceedings was considered recently by the Court of Appeal in the case of **CORTEC MINING KENYA LTD VS THE ATTORNEY GENERAL & 9 OTHERS C.A CIVIL APPLICATION No. 119 of 2015 (NBI)** where the Court held as follows:-

“It is plain to see that in Judicial Review, the Court is concerned with public law remedies. An injunction is a private law remedy, and it can also serve as a public law remedy. However, in the context of Judicial Review, it is not available either in the High Court or in this Court on appeal under the Law Reform Act”

The Court went on to add as follows:-

“In the instant case, the High Court was not legally empowered to grant the remedy of injunction. The law governing Judicial Review as set out in Section 8 of the Law Reform Act did not then as now permit the Court to grant an injunction. It is as plain as day light that, an order of injunction which the High Court was not by law empowered to grant is not available on appeal from this Court”

That decision is binding on me.

In the circumstances therefore, the Ex-parte Applicant’s Notice of Motion dated and filed herein on 23rd May 2016 is misplaced. It is accordingly dismissed out with costs to the Interested parties.

B.N. OLAO

JUDGE

4TH NOVEMBER, 2016

Ruling delivered, dated and signed in open Court this 4th day of November 2016.

Mr. Miano for Mr. Kagio for the Applicant present

Mr. Ombachi for the Respondent present

Mr. Bwonwonga for the Interested parties absent

B.N. OLAO

JUDGE

4TH NOVEMBER, 2016