



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO.23 OF 2015

MARY WANGUI PARMUTIA.....1ST APPLICANT

MOSES NKOITOI Ole NKAKO2ND APPLICANT

VERSUS

THE DISTRICT LAND ADJUDICATON & SETTLEMENT OFFICER (NAROK DISTRICT (COUNTY).....1ST RESPONDENT

THE DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT2ND RESPONDENT

CABINET SECRETARY - THE MINISTRY OF LANDS.....3RD RESPONDENT

RULING

(Leave to commence judicial review proceedings to compel Land Adjudication Officer and Minister to give consent to file civil proceedings in court on land under adjudication; Land Adjudication Act requiring consent of the Land Adjudication Officer; consent sought and denied; Land Adjudication Act providing for appeal to the Minister; Appeal made but same has not been considered; whether in the circumstances, mandamus may issue to compel Land Adjudication Officer and Minister to give consent; Since decision of Land Adjudication Officer is appealable, no leave may issue to compel him to give consent; But leave granted to apply for mandamus to compel Minister make a decision on the appeal against refusal by Land Adjudication Officer to give consent)

1. The application before me has been filed pursuant to the provisions of Order 53 Rules 1(1) (2) (3) and (4) of the Civil Procedure Rules, and Section 8(2) and 9 of the Law Reform Act. It is an application seeking leave to commence judicial review proceedings. The applicants want leave to apply for orders of mandamus directed at the respondents to compel them to issue her with consent to institute civil proceedings at the Environment and Land Court, Nakuru as provided by Section 30 of the Land Adjudication Act (CAP 284) Laws of Kenya.

2. The first applicant is mother to the 2nd applicant and wife to one Julius Parmutia (deceased). It is her case that her late husband was given land together with his brothers, by their late father Karongo Olesito, at the Oloshololesito Adjudication Section. In the year 1978, an adjudication committee was formed and came to the ground. The land was divided into three parcels No. 77, 78 and 79. Her husband was given the land parcel No. 79 measuring 200 acres. It is her case that her husband sold some portions of the land

and leased out some of it for wheat farming. In the year 2003 when the adjudication committee invited inspection of the register, they realized some plots imposed on their land parcel No. 79. They therefore raised objections. The objections were heard by the Adjudication Committee but the applicants were not satisfied. They then filed an appeal to the Minister which was heard and a decision rendered on 20 August 2015. Their appeal was dismissed. It is their view that their grievances were not properly looked into and they now desire to proceed to the High Court.

3. It is however a requirement of Section 30 of the Land Adjudication Act, that before filing suit in the courts, the consent of the Land Adjudication Officer is required. The applicants have averred that they sought consent on 16 September 2015 and on 17 September 2015, the Land Adjudication Officer declined to give consent. On 29 September 2015, the applicants, through their advocate on record, appealed the decision of the Land Adjudication Officer, declining to give consent, to the Minister of Lands. This letter has never been replied to. Owing to these developments, the applicants now want to file a motion for mandamus to compel the District Land Adjudication and Settlement Officer Narok District, the Director of Land Adjudication and Settlement, and the Cabinet Secretary of the Ministry of Lands to give consent to file suit.

4. I have considered the application for leave, and in my view, the provisions of Section 30 of the Land Adjudication Act, are critical. The said section is drawn as follows :-

Staying of land suits

S. 30 (1) Except with the consent in writing of the adjudication officer, no person shall institute, and no court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under section 29(3) of this Act.

(2) Where any such proceedings were begun before the publication of the notice under section 5 of this Act, they shall be discontinued, unless the adjudication officer, having regard to the stage which the proceedings have reached, otherwise directs.

(3) Any person who is aggrieved by the refusal of the adjudication officer to give consent or make a direction under subsection (1) or (2) of this section may, within twenty-eight days after the refusal, appeal in writing to the Minister whose decision shall be final.

(4) The foregoing provisions of this section do not prevent a final order or decision of a court made or given in proceedings concerning land in an adjudication section being enforced or executed, if at the time this Act is applied to the land the order or decision is not the subject of an appeal and the time for appeal has expired.

(5) A certificate signed by an adjudication officer certifying land to be, or to have become on a particular date, land within an adjudication section shall be conclusive evidence that the land is such land.

(6) Every certificate purporting to be signed by an adjudication officer shall be presumed to be so signed unless the contrary is shown.

5. The applicants have averred that the adjudication register is not yet final, and therefore, pursuant to Section 30 (1), the consent of the Land Adjudication Officer is required before they can file suit. It will be seen that following to Section 30 (3) of the Land Adjudication Act, a person who is aggrieved by the failure of the Land Adjudication Officer to give consent to file suit, has avenue to appeal this decision to the Minister. Consent was sought from the District Land Adjudication Officer who declined to grant it. An appeal was written to the Cabinet Secretary (the current equivalent of Minister) through the letter of 29 September 2015. So far, the Cabinet Secretary has not replied to the letter.

6. Having looked at the provisions of Section 30 above, I am afraid that I am unable to grant leave to the

applicant to commence judicial review proceedings for orders of mandamus against the District Land Adjudication Officer and the Director of Land Adjudication. This is because their decisions are appealable to the Minister. An appeal has already been filed and I presume that the same is pending consideration. Neither can I, at this stage, compel the Minister to give consent to the applicants because I do not know whether the Minister has considered the matter or not, and I am unable to interfere, at this stage, with his discretion of whether or not to grant consent.

7. The most I can do is to grant leave to the applicants to file judicial review in the nature of mandamus, if they are minded to do so, to compel the Minister make a decision on their appeal.

8. I therefore decline to issue the orders sought by the applicants but instead grant leave to them, to file a motion for judicial review for orders of mandamus, only as against the Cabinet Secretary of the Ministry of Lands, to compel the Cabinet Secretary make a decision on their appeal against the refusal of the Land Adjudication Officer to give consent to file suit. If the applicants are amenable to the orders herein, I direct that the motion be filed and served within 21 days or else the leave granted herein will automatically lapse.

9. The costs of this application shall be costs in the main motion.

10. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 4th day of November 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of : -

Mr Karanja Mbugua for applicant

Court Assistant : Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU