



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT NYERI**  
**(CORAM: VISRAM, KOOME & ODEK, J.J.A)**  
**CIVIL APPEAL NO. 24 OF 2013**

**BETWEEN**

STANLEY THIANIE MBUI ..... 1<sup>ST</sup> APPELLANT

JOHN KINAI MUTOMBUI ..... 2<sup>ND</sup> APPELLANT

**AND**

**THE LAND ADJUDICATION OFFICER**

TIGANIA WEST DISTRICT ..... 1<sup>ST</sup> RESPONDENT

SIMON NCHEBERE M'IKIUGU ..... 2<sup>ND</sup> RESPONDENT

*(Being an appeal from the ruling of the High Court of Kenya at Meru (Njoroge, J.)*

*Dated 6<sup>th</sup> June, 2013*

**in**

**H.C Judicial Review No. 93 of 2010)**

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**JUDGEMENT OF THE COURT**

[1] This is an appeal from the ruling of the High Court (Njoroge, J.) wherein the appellants' application where he sought for orders of certiorari to quash the decision of the District Land Adjudication Officer Tigania West of 2<sup>nd</sup> July 2010 in AR objection No 227 and 228 was dismissed with costs. Pursuant to leave granted by the High Court on 20<sup>th</sup> December, 2010, the appellants filed a Notice of Motion application seeking *inter alia* an order of *certiorari* to call and quash the decision of the 1<sup>st</sup> respondent pronounced on 2<sup>nd</sup> July, 2010 in AR objection No. 227 & 229 in respect of P/NO. 1779 and 3245 within Uringu II Adjudication Section (suit properties).

[2] Stanley Thiane Mbui, the 1<sup>st</sup> appellant is the owner of P/NO. 1779 and John Kinai Mutombui the

2<sup>nd</sup> appellant is the owner of P/NO. 3245. The suit properties are subdivisions of the original parcel P/NO. 1779 within Uringu II adjudication section. The appellants claim was that the original parcel was awarded to their late father, M'Mbui Kiraku, by the Land Committee and it was registered in the demarcation and adjudication records as belonging to their father. The appellants contended that a dispute arose between their late father and the 2<sup>nd</sup> respondent's father, M'Ikiungu Turuchi (deceased), over the original parcel; the dispute was resolved during the lifetime their fathers. The African Court at Miathene and the Land Committee case No. 299/76/77 resolved the dispute in favour of the appellants' father. Subsequently, the appellants' father subdivided the original parcel and transferred the same to them.

[3] Following the entry of the appellants as the owners of the suit properties in the Adjudication register, the 2<sup>nd</sup> respondent filed objections being AR Objection No. 227 and 229 before the District Land Adjudication Officer Tigania West. It was the 2<sup>nd</sup> respondent's case that both the appellants' father and his father gathered the original parcel and a dispute arose as to their respective shares therein. After the death of the appellants' father, the appellants fraudulently subdivided and transferred the original parcel to themselves. The 2<sup>nd</sup> respondent contended he had an interest in the suit properties. After hearing the evidence of the parties in respect of the objection, the 1<sup>st</sup> respondent vide an award dated 2<sup>nd</sup> July, 2010 found that the suit properties were transferred illegally and awarded the 2<sup>nd</sup> respondent one acre to be hived from each of the suit properties.

[4] It is that decision that the appellants sought to be quashed in the Judicial review proceedings. The grounds upon which the appellants relied on in support of their application were firstly; the 1<sup>st</sup> respondent acted in excess of his mandate and the law in subdividing and transferring the appellants' land to the 2<sup>nd</sup> respondent; secondly, the 2<sup>nd</sup> respondent had no legal capacity to lodge the objection proceedings; thirdly, that the dispute in respect of the original parcel was decided in favour of the appellants' father in several forums; fourthly, that the appellants were born on the suit properties while the 2<sup>nd</sup> respondent has never occupied any portion thereon.

[5] In opposing the application, the 2<sup>nd</sup> respondent contended that the appellants had not produced evidence to show that the dispute over the original parcel had been determined in several forums. He also contended that the 1<sup>st</sup> respondent did not act *ultra vires* in the conduct of the proceedings leading to the determination of the objections. The High Court, (*Njoroge, J.*), in a ruling dated 6<sup>th</sup> June, 2013, dismissed the appellants application. It is that decision that has provoked this appeal based on the following grounds:-

***The learned Judge erred both in law and facts:-***

- 1. By failing to find that the proceedings before him were not in any way opposed by the 1<sup>st</sup> respondent, whose illegal and unprocedural proceedings and decision were sought to quashed ex-cathedra.***
- 2. By failing to find and hold that the 2<sup>nd</sup> respondent had no locus standi to file and be heard in objection Nos. 227 and 229 over land parcel No. 1179 and 3245, since he had no form of letters of administration over the estate of his deceased father, M'Ikigu Turu, and those parcels have never been recorded in his name.***
- 3. By failing to find and hold that the 1<sup>st</sup> respondent had no jurisdiction under the Land Adjudication Act, Chapter 28, Laws of Kenya or at all, to entertain objection Nos. 227 and 229 over land parcels Nos. 1779 and 3245 which disputes concerned a dispute over acquisition and ownership of the two parcels of land.***
- 4. In misdirecting his mind to misinterpreting and misapplying the spirit, purport and import of section 26 of the Land Adjudication Act which empowers a land adjudication officer to rectify an incorrect or incomplete register, but not to receive an objection, evidence and determine***

*weighty questions of acquisition and ownership of land, which is an exclusive preserve of the Land Adjudication Committee.*

5. *By failing to find and hold that the 1<sup>st</sup> respondent had no power or jurisdiction and/or basis at all to award to the 2<sup>nd</sup> respondent one acre each from P/NO. 1779 & 3245 since the proceedings before the 1<sup>st</sup> respondent did not claim such acreages.*
6. *In holding that there was no evidence of determination of disputes over the two parcels by a committee and provincial land adjudication officer, yet the proceedings were annexed to the affidavits filed by the appellants.*
7. *In finding that the appellants did not adduce before the court proceedings of the African court, yet they had pleaded that such proceedings could not be traced and the respondents did not dispute existence of such proceedings.*
8. *By invoking inapplicable regime of land, to wit the Land Adjudication Act which as per its preamble, concerns rights and interests in trust land yet the parcels did not form the category of trust land and all dispute concerning them ought to be resolved under the Land Consolidation Act which as per its preamble, deals with ascertainment of rights and interest in land in special areas, under which category the two land parcels of land fall.*
9. *In holding that the only recourse which the appellant had was to appeal against the decision of the 1<sup>st</sup> respondent to the minister under section 29 of the Land Adjudication Act.*

[6] During the hearing of this appeal, Mr. Carlpeters Mbaabu, learned counsel for the appellants, submitted that the Notice of Motion was not opposed by the 1<sup>st</sup> respondent either by way of affidavit or otherwise. He stated that pursuant to **Order 53 rule 4, 2, & 3** of the **Civil Procedure Rules**, a party intending to oppose a Judicial Review matter does so through an affidavit. Mr. Mbaabu argued that the learned Judge, (**Njoroge, J.**), failed to find the 2<sup>nd</sup> respondent had no *locus standi* to file the objection since he had not obtained letters of administration over his father's Estate. According to him, the 2<sup>nd</sup> respondent went before the land adjudication officer to represent his father's Estate and not his own personal interest.

[7] Mr. Mbaabu submitted that a writ of *certiorari* is concerned with the efficacy of the decision making process and not the merits of the decision itself. He contended that the objection should not have been entertained by the adjudication officer since it related to ownership of the suit properties which had already been heard by the Section Adjudication Committee and the African Court of Justice in Miathene area. He emphasized that there was clear evidence in the proceedings conducted by the Adjudication Officer that the issue had been determined by the Land Adjudication Committee. Mr. Mbaabu argued that **Section 26** of the **Land Adjudication Act** gave the adjudication officer jurisdiction to deal with the correction of errors in the register as opposed to hearing objections based on interest in land which was within the purview of the Land Adjudication Committee.

[8] Counsel further argued that the decision of the adjudication officer was irrational for capriciously awarding the 2<sup>nd</sup> respondent 1 acre from each of the suit properties; this was for reasons that the land adjudication officer had no power to do order allocation of land. Mr. Mbaabu contended that the learned Judge erred in applying the **Land Adjudication Act** yet the said Act was only applicable to trust land. The suit properties were special areas and therefore fell under the Land Consolidation Act; he faulted the learned Judge for holding that the only recourse to the appellants was to file an appeal against the decision of the adjudication officer to the Minister as availability of an alternative remedy did not at all bar the appellants from seeking Judicial Review.

[9] In opposing the appeal, Mr. Ayub Anampiu, learned counsel for the 2<sup>nd</sup> respondent, stated that the 1<sup>st</sup> respondent did not oppose the application in the High Court by filing a replying affidavit as it was not necessary to do so. This left the Judge with the option of only writing the judgment based on the evidence

adduced by the appellants and the 2<sup>nd</sup> respondent. He argued that **Section 12** of the **Land Adjudication Act** gave the land adjudication officer very wide powers. He contended that the land adjudication officer was not bound by any rules other than those regarding fair administrative action or a fair hearing. Mr. Anampiu maintained that the 2<sup>nd</sup> respondent was not required to have obtained letters of administration to file objections regarding his rights over the suit premises. He submitted that the 1<sup>st</sup> respondent had the jurisdiction to consider the objections filed by the 2<sup>nd</sup> respondent and the 1<sup>st</sup> respondent properly applied the law in determining the objections.

[10] Mr. Anampiu argued that despite the fact that the 2<sup>nd</sup> respondent did not specify the portion he claimed from the suit properties, the 1<sup>st</sup> respondent had discretion to award the 2<sup>nd</sup> respondent a portion he thought was reasonable. He contended that no proceedings were produced by the appellants to show that the issue raised in the objection was determined by the Land Adjudication Committee and the Provincial land adjudication officer. He maintained that the appellants never raised the aforementioned issue before the 1<sup>st</sup> respondent when he was considering the objections.

[11] This appeal challenges the exercise of administrative power vested upon the District Adjudication Officer Tigania West Uringu 11 Adjudication Section. Section 10 of the Land Adjudication Act CAP 284, gives an Adjudication officer jurisdiction regarding all claims relating to interests in land within an adjudication area with power to determine any questions. The procedure requires the proceedings be recorded. The appeal before us raises the following points of law which we have identified for our consideration:

1. ***What are the powers and duties of a Land adjudication officer?***
2. ***Did the 1<sup>st</sup> respondent act ultra vires in awarding the 2<sup>nd</sup> respondent 1 acre from each of the suit properties?***
3. ***Did the 1<sup>st</sup> respondent have locus standi to file the objections before the land adjudication officer?***
4. ***Did the trial court properly exercise its discretion in dismissing the Judicial Review Proceedings?***

[12] Pursuant to the **Land Adjudication Act**, once the Minister orders the application of the Act in any area of trust land the Minister is required to appoint a land adjudication officer under **Section 4** of the Act. Under **Section 3** of the **Land Adjudication Act**, the Minister may by order apply this **Act** to any area of Trust Land if:

- a. ***the County Council in whom the land is vested so requests;***
- b. ***the Minister considers it expedient that the rights and interests of persons in the land should be ascertained and registered; and***
- c. ***the Land Consolidation Act does not apply to the area.***

Although counsel for the appellant argued, this Act did not apply to the suit premises. He produced no evidence to support this contention.

**Sections 9, 10 & 11** of the **Land Adjudication Act** set out the powers and duties of a land adjudication officer. **Section 9** provides:-

***“ 9 (1) The adjudication officer shall be in charge of and shall exercise general supervision and control over the adjudication.***

***(2) The adjudication officer shall hear and determine -***

**a) any petition respecting any act done, omission made or decision given by a survey officer, demarcation officer or recording officer; and**

**b) any objection to the adjudication register which is submitted in accordance with section 26 of the Act.”**

**Section 10** sets out the general powers of an adjudication officer as follows:-

**“ 10 (1) The adjudicating officer shall have jurisdiction in all claims made under this Act relating to interests in land in the adjudication area, with power to determine any question that needs to be determined in connexion with such claims. And for that purpose he shall be legally competent to administer oaths and to issue summonses, notice or orders requiring the attendance of such persons or the production of such documents as he may consider necessary for the carrying out of the adjudication.**

**(2) The adjudication officer may himself exercise all or any of the powers which are given by this Act to officers subordinate to him.”**

**Section 11** provides:-

**“ In the course of the adjudication, the adjudication officer shall have the following powers-**

**a) he may issue to the officers subordinate to him and to committees and boards such general or particular directions as he thinks necessary for carrying out the provisions of the Act which relate to the procedure of demarcation, recording of title and survey within the adjudication area;**

**b) at any time before the adjudication register is completed, he may correct any error or supply any omission occurring in the adjudication register;**

**c) he may make a claim or otherwise act on behalf of a person who is absent or under disability if he considers it necessary to avoid injustice.”**

[13] Having established the powers and duties of a land adjudication officer, the second issue for us to determine is whether the 1<sup>st</sup> respondent acted *ultra vires* when he/she heard and determined the objections filed by the 2<sup>nd</sup> respondent. Following the entry of the appellants as the owners of the suit properties in the Adjudication register, the 2<sup>nd</sup> respondent filed objections against the same being AR Objection No. 227 and 229 pursuant to **Section 26** of the **Land Adjudication Act**. The appellants' contention is that the 1<sup>st</sup> respondent acted beyond his or her jurisdiction by entertaining the objections which related to ownership of the suit properties; ownership of the suit properties was determined in their late father's favour by the Section Adjudication Committee and the African Court of Justice in Miathene area. The appellants also argued that the **Land Adjudication Act** limited the 1<sup>st</sup> respondent's powers to only correct any errors in the adjudication register and not to determine issues of interest in land.

[14] Based on the foregoing provisions, **Section 10 (1)** of the **Land Adjudication Act**, gave the 1<sup>st</sup> respondent jurisdiction in all claims under the Act relating to interests in land in an adjudication area with power to determine any question that needs to be determined in connexion with such claims. Therefore, the appellants' contention that it was only the Land Adjudication Committee that could determine issues relating to interest in land under the Act is without basis. The appellants also did not produce any evidence to show that the objections raised by the 2<sup>nd</sup> respondent were determined by the Section Adjudication Committee and the African Court of justice. All the appellants produced was a hearing notice served upon the 1<sup>st</sup> appellant by the Provincial Land Adjudication and Settlement and a note from Miathene District Court which indicated that there were no records of the proceedings in the said court. We are satisfied that the 1<sup>st</sup> respondent had jurisdiction to hear and determine the objections filed by the

2<sup>nd</sup> respondent.

[16] Counsel for the appellant strenuously argued that the 2<sup>nd</sup> respondent lacked capacity to file an objection for want of letters of administration in respect of his father's estate. The principles of *locus standi* determine who is entitled to bring a particular dispute in court and in this case before the land adjudication officer. **Section 26 (1)** of the **Land Adjudication Act** provides:-

***“ Any person named or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer in writing, saying in what respect he considers the adjudication register to be incorrect or incomplete.” Emphasis added***

Lord Denning in ***AG (Gambia) -vs- Nijie (1976) 1 ALL ER 540*** stated,

***“ The words person aggrieved are of wide import and should not be subjected to a restricted interpretation. They do not include, of course, a mere busy body who is interfering in things that do not concern him but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interest.”***

In this case, the 2<sup>nd</sup> respondent was representing his interests when he filed the objections and therefore did not require obtaining of letters of administration for his father's Estate.

[17] Granting of judicial review orders involves the exercise or refusal to exercise judicial discretion, the issue of whether the trial Judge properly exercised his discretion when he dismissed the Notice of Motion is a pertinent one.

In ***Municipal Council of Mombasa -vs- Republic & Umoja Ltd- Civil Appeal No. 185 of 2001***, it was held that,

***“ Judicial Review is concerned with the decision making process, not the merits of the decision itself: the Court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision, the decision maker took into account relevant matters or did take into account irrelevant matters...The Court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision.”***

Based on the foregoing, it is clear that the 1<sup>st</sup> respondent in determining the objections acted within his/her jurisdiction. The 1<sup>st</sup> respondent also complied with the laid down procedure provided in **Section 12** of the **Land Adjudication Act**.

[18] For the foregoing reasons, we are satisfied that the learned Judge exercised his discretion properly by dismissing the Judicial Review proceedings. This is because the appellants' had sought an order of certiorari to quash the decision of the 1<sup>st</sup> respondent on the grounds that it was in excess of his jurisdiction. As expressed herein above the 1<sup>st</sup> respondent acted within his jurisdiction. In ***Republic -vs- Kenya National Examinations Council exparte Gathenji & Others- Civil Appeal No. 266 of 1996***, stated

***“Only an order of certiorari can quash a decision already made and order of certiorari will issue if the decision is without jurisdiction or in excess of the jurisdiction, or where the rules of natural justice are not complied with..”***

Lastly, although counsel for the appellant argued that the suit property was not subject of the Adjudication Act, as he argued the process was completed, he did not produce any evidence by way of a

gazette notice to show the area was not an adjudication area.

We think we have said enough to demonstrate that this appeal lacks merit; it is hereby dismissed with costs to the 2<sup>nd</sup> respondent.

*Dated and delivered at Nyeri this 26<sup>th</sup> day of February, 2014.*

*ALNASHIR VISRAM*

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*JUDGE OF APPEAL*

*MARTHA KOOME*

.....

*JUDGE OF APPEAL*

*J. OTIENO-ODEK*

.....

*JUDGE OF APPEAL*

I certify that this is a true copy to the original.

**DEPUTY REGISTRAR**