



Boit v Deputy County Commissioner Baringo Central Sub County & 3 others; Relimoi (Interested Party) (Judicial Review Cause E001 of 2024) [2024] KEELC 6422 (KLR) (26 September 2024) (Judgment)

Neutral citation: [2024] KEELC 6422 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KABARNET

JUDICIAL REVIEW CAUSE E001 OF 2024

L WAITHAKA, J

SEPTEMBER 26, 2024

FORMERLY KABARNET HIGH COURT JUDICIAL REVIEW CAUSE NO.E001 OF 2023)

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA

AND

IN THE MATTER OF PLOT NUMBER 278 MOROP ADJUDICATION SECTION

AND

IN THE MATTER OF THE MATTER OF THE DECISION OF THE DEPUTY COUNTY COMMISSIONER, BARINGO CENTRAL SUB COUNTY

BETWEEN

PETER KETER BOIT APPLICANT

AND

DEPUTY COUNTY COMMISSIONER BARINGO CENTRAL SUB COUNTY 1ST RESPONDENT

THE CABINET SECRETARY FOR LANDS, SETTLEMENT, PUBLIC WORKS AND HOUSING 2ND RESPONDENT

THE COUNTY LAND REGISTRAR, BARINGO 3RD RESPONDENT

THE COUNTY LAND ADJUDICATION OFFICER, BARINGO 4TH RESPONDENT



AND

KAPKIOY RELIMOI INTERESTED PARTY

JUDGMENT

Introduction

1. Pursuant to leave granted on 14th March 2023 to Peter Keter Boit, hereinafter referred to as the applicant, to apply for judicial review orders of Certiorari and Prohibition against the decision of the Deputy County Commissioner (DCC) Baringo Central Sub County made on 28th February 2023 in Appeal to the Minister Case No.453 of 2022, the Ex parte applicant filed the notice of motion dated 24th August, 2023 seeking:-
 - i. An order of certiorari to remove to this court for purpose of being quashed the proceedings and the judgment of the Deputy County Commissioner, Baringo Central (1st Respondent) in Appeal to the Minister Case No. 453 of 2022 dated 28th February 2023 in relation to land parcel No. 278 Morop Adjudication Section.
 - ii. An order of prohibition prohibiting the 3rd and the 4th respondents from issuing title deed to the Interested Party as the owner of land parcel number 278 Morop Adjudication section pursuant to the judgment /decision of the 1st respondent in appeal to the Minister case No.453 of 2022 dated 28th February 2023.
 - iii. Any other relief that the court may deem fit and just to grant.
 - iv. Costs of the application.
2. The application is premised on the grounds on its face, the statutory statement, the affidavit in verification of facts and the supplementary affidavit of the applicant sworn on 11th June 2024.
3. In a nutshell, the applicant contends that the Minister erred by entertaining the appeal preferred to him by the interested party when the same was time barred; that the Minister did not accord him a fair hearing and that the Minister was biased against him.
4. The applicant explains that he is a person with disability and faults the 1st respondent for having failed to avail to him the services of a sign language interpreter to help him present his case and compelled him to appoint a person to represent him when he could have presented the case himself with the help of a sign language interpreter.
5. On the alleged bias, the applicant has deponed that the 1st respondent kept interrupting his representatives and witnesses by interjecting during the hearing. He also claims that the 1st respondent asked leading questions to the interested party with pre-conceived answers thereby conferring undue advantage to the interested party over him.
6. In reply and opposition to the application, the respondents filed the replying affidavit of John Ongalo Laku, sworn on 12th February 2024. Through that affidavit, the respondents have denied the allegations contained in the application and inter alia deponed as follows:-
 - i. That it is not true the appeal was filed on 22nd January 2008, 50 days from the date of delivery of the Land Adjudication Officer's decision;



- ii. That upon filling the appeal, the interested party paid some money and was issued with official receipt number 8920733 as attested by the document annexed to the affidavit marked JOL3.
 - iii. That during proceedings, it was duly recorded that the applicant had a hearing and communication problem and that he was being represented by his brother, Michael Kipketer Boit after having obtained Power of Attorney. Annexed to the affidavit is an affidavit marked JOL 5 sworn by the applicant's brother indicating that the applicant's family had appointed Michael Kipketer Boit, to represent the applicant in the appeal;
 - iv. That during the hearing, there was an interpreter who was appointed to interpret the proceedings to both parties;
 - v. That from the judgment of the respondent, the evidence of the applicant and his witnesses was considered.
 - vi. That it is also clear from the proceedings that the real issues were considered.
7. In view of the foregoing, the respondents urge the court to dismiss the application as the applicant has not met the threshold for being granted the orders sought.
8. The application was disposed off by way of written submissions.

SUBMISSIONS

Applicant's submissions

9. In his submissions the applicant has given a background of the case and identifies the issue for the court's determination to be whether the applicant was afforded a fair hearing by the 1st respondent.
10. Concerning that issue, the applicant has reiterated his averments that the applicant was denied a fair hearing and that the 1st respondent was biased against him on account of his alleged failure to provide the applicant with a sign language interpreter who would have helped the applicant present his case by himself as opposed to through a representative. It is further submitted that the applicant has proved that the 1st respondent was biased against him. The applicant further complains that the 1st respondent was irrational and did not accord him sufficient time to cross examine the interested party and his witnesses.
11. Despite having alleged in his pleadings that the appeal was time barred, the applicant appears to have abandoned that ground.

Respondents' submissions

12. In their submission's filed on 15th July 2024 the respondents have framed three (3) issues for the court's determination. These are:-
 - i. Whether applicant was accorded natural justice;
 - ii. Whether the respondents were biased against the applicant; and
 - iii. Whether the appeal was filed out of time.
13. On whether the applicant was accorded natural justice, the applicant points out that in the appeal case, both the appellant and the respondent could not take charge of their cases and for that reason both had on the date of hearing, appeared with their representatives. Based on the proceedings of the appeal case and the affidavit attached to the respondents' replying affidavit, marked JOL5 showing that the



applicant's family had appointed the applicant's brother to represent him in the case, the respondents submit that there is no way the 1st respondent could have imposed a representative on the applicant, in the circumstances.

14. The contention that the applicant's representative was not well versed with the case is said to be unfounded since he made a statement in the proceedings, got cross examined and answered questions without indicating that he did not know the answer to questions put to him.
15. Concerning the applicant's claim that he was not given a chance to cross examine witnesses and that the 1st respondent kept interjecting while he was cross examining the interested party's witnesses, the respondents submit that the proceedings show that both parties were accorded an opportunity to present their cases and to cross examine their witnesses.
16. The respondents' assert that the principles of natural justice were duly met.
17. As to whether the respondents were biased against the applicant, based on the proceedings, it is submitted that there was no different treatment for a party for whatever reason.
18. The allegation that the 1st respondent asked the interested party leading questions is said to be unfounded. In that regard, it is pointed out that the questions that the 1st respondent asked the interested party and the answers thereto are recorded. The questions the 1st respondent asked the interested party are said to be similar to those the 1st respondent asked the applicant's witness, hence no bias deduceable therefrom.
19. Terming the applicant's contention that the 1st respondent had a predetermined decision because he failed to visit the site unfounded, the applicant submits that the decision to conduct a site visit is discretionary and that failure to conduct a site visit does not ipso facto denote that the 1st respondent was biased.
20. According to the respondents, nothing turns on the allegations that the 1st respondent told the parties not to worry because the surveyor will measure the land for them. Such a statement, if at all was made by the 1st respondent, is said to be incapable of proving that the 1st respondent had decided that he will give a ruling in favour of the interested party.
21. It is pointed out that the 1st respondent delivered his ruling and provided reasons for it. Based on the ruling, the 1st respondent submitted that the 1st respondent considered the evidence that was tendered by all the parties in reaching his determination. The ruling by the 1st respondent is said to be sufficient to controvert any allegation of bias based on presumptions thereof.
22. Based on the decision in the case of *Maingi v Kyumbwa & 2 Others (Constitutional Petition 11 of 2021)* (2022) KEELC 3225 (KLR)(27 July 2022) (Judgment), the respondents assert that the applicant has not proved the alleged bias against the 1st respondent.
23. On whether the appeal was filed out of time, based on the extract of appeals annexed to the replying affidavit of the 1st respondent marked JOL3 the respondents maintain that the appeal was filed 50 days after the objection stage decision was made hence filed within time.

Analysis and determination

24. From the pleadings filed in this application, the documentary evidence adduced in support thereof, the submissions and the law applicable, the issues for the court's determination are as follows:-



- i. Whether the appeal was filed outside the time provided for under the *Land Adjudication Act*, Cap 284 Laws of Kenya hence time barred;
 - ii. Whether the applicant was accorded a fair hearing; and
 - iii. Whether the 1st respondent was biased against the applicant.
25. On whether the appeal was filed outside the time provided for under the *Land Adjudication Act* (LAA), hence time barred, whereas the applicant claimed that the appeal was filed outside the time provided for under LAA hence time barred, he never provided any evidence capable of proving that fact.
26. As the person who desired judgment arising out of that assertion, the burden was on the applicant to prove that fact. In that regard, see Section 107 of the *Evidence Act*, which provides as follows:-
- “ 107(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts that those facts exist.”
27. In a bid to demonstrate that the appeal was filed on time, the 1st respondent filed a register of appeals showing that the appeal was filed before the time provided in law for filing lapsed.
28. Concerning the allegations that the 1st respondent was biased against the applicant and that the applicant was denied fair hearing, the totality of the evidence adduced is incapable of proving that fact. The evidence comprised in the proceedings of the appeal before the Minister, JOL 2, shows that both parties were accorded opportunity to present their cases and cross examine witnesses. There is no indication whatsoever, that the 1st respondent was biased as against the applicant or influenced the decision of the applicant’s family to appoint his brother as his representative as indicated by the document marked JOL5.
29. The upshot of the foregoing is that the notice of motion dated 24th August 2023 is found to be lacking in merit and is dismissed with costs to the respondents.
30. Orders accordingly.

DATED, SIGNED AND DELIVERED AT ITEN THIS 26TH DAY OF SEPTEMBER, 2024.

L. N. WAITHAKA

JUDGE

Judgment delivered virtually in the presence of:-

Mr. Chebii for exparte applicant

Mr. Kipruto holding brief for Ms. Cheruiyot for the respondent

Court Assistant: Ian

