



REPUBLIC OF KENYA

High Court at Kerugoya

Judicial Review 26 of 2012

IN THE MATTER OF AN APPLICATION ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF LAND ADJUDICATION ACT

AND

IN THE MATTER OF LAND PARCEL NUMBER EMBU/IRIAITUNE/1183

AND

IN THE MATTER OF LAND APPEAL CASE NO. 26 OF 1989 IRIAITUNE

ADJUDICATION SECTION BEFORE THE MINISTER FOR LANDS

BETWEEN

REPUBLICAPPLICANT

VERSUS

THE MINISTER FOR LANDS.1ST RESPONDENT

ATTORNEY GENERAL2ND RESPONDENT

AND

KINANI KIMWATU (DECEASED) Represented

BY JOHNSON NJERU KINANU INTERESTED PARTY

EXPARTE

estate of BONIFACE NJERU NGARI (Legal Representative of the

NGARI CINGANO1ST APPLICANT

NTHIGA NGONDU2ND APPLICANT

JUDGMEN

Having obtained leave on 10/1/2013, the applicants herein filed this Notice of Motion on 21/1/2013 seeking the following orders:-

(a) That this Honourable Court do issue orders of certiorari to remove to this Court and quash the proceedings and decision of the Minister for Lands dated 19/7/2012 in Appeal Case No. 26 of 1989 in respect of Land Parcel Number EMBU/IRIAITUNE/1183 in Iriaitune Adjudication Section.

(b) That this Honourable Court do issue orders of prohibition to prohibit the Minister for Lands, the Director of Land Adjudication and Settlement, the Chief Land Registrar Mbeere District from implementing the findings/decisions/award of the Minister for Lands dated 19/7/2012 in the Minister's Land Appeal Case number 26 of 1989 in respect of land parcel number EMBU/IRIAITUNE/1183 in Iriaitune Adjudication Section.

(c) That costs be provided for.

All the affected parties having been served, it was agreed that the application be canvassed by way of written submissions. The parties have now all filed their submissions which I have considered together with all the pleadings herein.

It is the applicants' case that the Minister of Lands Appeal Case No. 26 of 1989 arising out of Objection

Cause No. 35 of 1986 was filed out of time and therefore the decision of the District Commissioner who entertained the said appeal was ultra-vires as the appeal ought to have been filed within 60 days from the time the decision was made i.e. before 11/5/1986 since the decision was made on 11/2/1986. However, from my perusal of the replying affidavit of JOHNSON NJERU KINANU the interested party herein together with the supporting annexures, it is clear to me that the appeal to the Minister from the decision of the adjudication officer was filed on 9/4/1986 and paid for on 10/4/1986 and therefore it was filed within time and not out of time as alleged by the applicants. The appeal itself is annexed to the interested party's replying affidavit (**see annexure J N K (1) (a)**) and it bears the date stamp of 9/4/1986. There is also annexure J N K (1) (b) which is a receipt No. 378646 dated 10/4/1986 for the sum of Ksh. 135 being payment in respect of appeal to the Minister on plot No. 1183 Iriaitune adjudication Section. There is no evidence before me that the said appeal was filed in 1989 and therefore out of time as alleged by the applicants. If anything, as indicated above, the interested party has availed documentary evidence that the appeal was filed on 9/4/1986 and paid for on 10/4/1986. If the offices from the Ministry of Lands allocated the appeal case No. 26 of 1989, that does not change the fact that the appeal was in fact filed on 9/4/1986. The appeal having been filed within the stipulated period, the complaint that the Minister acted ultra-vires cannot be justified and is rejected.

On the allegation that the Minister for Lands as represented by the District Commissioner was openly biased and did not observe the rules of natural justice, I see no evidence of that. The District Commissioner while hearing the appeal had the discretion of who to believe and who not to believe. That was his decision based on the evidence before him and the demeanour of the witnesses. It is not suggested, for example, that he refused to give a hearing to any of the parties. The complaint of bias is a mere allegation not based on any facts. I similarly reject it.

On the issue that the Minister of Lands acting through the District Commissioner allowed one JOHNSON NJERU KINANI to purport to represent the deceased KINANI KIMWATU when he was not a representative of the deceased's estate, it is clear that when the dispute was before the adjudication officer, the same JOHNSON NJERU KINANI represented the deceased KINANI KIMWATU and no objection was taken on that ground to enable the presiding officer make a ruling on any objection. And from the proceedings during the appeal, the issue of representation of the deceased's estate was also not raised. During the proceedings both at the adjudication stage and during the hearing of the appeal, the interested party JOHN NJERU KINANI described himself as a son to the deceased KINANI KIMWATU. He was therefore describing himself as a successor to the deceased and an interested party to the proceedings in terms of **Section 13 of the Land Adjudication Act** and therefore he had the right of audience before the adjudication officer to litigate on behalf of the deceased. It is also instructive to note that the **Land Adjudication Act** talks of "**Successors**" and not "**administrators**". A "**successor**" is defined in the **BLACK'S LAW DICTIONARY 9TH Edition** as follows:-

"A person who succeeds to the office, rights, responsibilities or place of another, one who replaces or follows a predecessor".

On the other hand, an "**administrator**" is defined by the same dictionary as

"A person appointed by the court to manage the assets and liabilities of an interested decedent"

And under the Law of Succession Act, an “**administrator**” is defined as

“ a person to whom a grant of letters of administration has been made”

Looking at the objects of the Land Adjudication Act, it is clear that the legislature did not envisage a situation whereby every person interested or claiming any interest in any land of a deceased would first have to obtain a grant before making a claim during the adjudication exercise. That is why **Section 13 (4) of the Land Adjudication Act** empowers the demarcating offices to note the claim of any interested party to the land even if that party is not present. The legislature must have appreciated that to insist on the strict rules of representation would have defeated the claims of persons that would otherwise be entitled to the land hence the use of the word “**Successors**” rather than “**Administrators**”. Therefore, the Minister was perfectly in order to hear the interested party as representing the deceased and it was not fatal that the interested party had not obtained a grant of letters of administration to the Estate of the deceased. Indeed in **TIMOTHEO MAKENGE VS MANUNGA NGOCHI 1979 K.L.R 53** the **Court of Appeal for Eastern Africa** stated that the Minister’s duty under **Section 29 of the Land Adjudication Act** is essentially to “**determine the appeal and make such orders thereon as he thinks just**” and that in doing so, the Minister “**is not bound**” to follow the procedure prescribed for hearing of civil suits under the **Civil Procedure Act**. Therefore, judicial precedent clearly shows that the applicants claims that the interested party had no locus to participate in the appeal before the Minister because he had not obtained a grant of letters administration in respect of the Estate of KINANI KIMWATU is not well founded and must be dismissed.

Ultimately therefore, upon considering all the matters in this Notice of Motion, I find that the same lacks merit. The allegations that the Minister was biased and did not observe the rules of natural justice or that he acted out of jurisdiction by entertaining an appeal out of time and by allowing a person with no locus to take part in the proceedings have not been established. The Notice of Motion dated 21/1/2013 seeking orders of certiorari and prohibition is accordingly dismissed with costs.

B.N. OLAO

JUDGE

17/5/2013

17/5/2013

Before B.N. OLAO – JUDGE

CC – Muriithi

No appearance for Applicant

No appearance for Respondent

Mr. Mwai for Kathungu for interested party present

COURT: Judgment delivered this 17th day of May, 2013 in open Court.

Mr. Mwai for Mr. Kathungu for interested party present

No appearances by the other parties.

B.N. OLAO

JUDGE

17/5/2013