



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

JUDICIAL REVIEW NO. 11 OF 2017

ROSE KANINI M'ATHERU.....1ST APPLICANT

LUCY MAKENA KITHOI.....2ND APPLICANT

VERSUS

THE DISTRICT LAND ADJUDICATION &

SETTLEMENT, KARAMA ADJUDICATION SECTION.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

SAVERA MWALACHI.....INTERESTED PARTY

JUDGMENT

1. The ex parte applicant filed this Judicial Review motion on 16.3.2017 seeking orders that; The Honourable court be pleased to issue an order of certiorari, quashing the 1st respondent's decisions dated 22.11.2016 made in objection Nos. 3042,2502, 181, 5837 & 5346 in Tigania East Adjudication Area, Karama Adjudication section.
2. Applicants contend that the parcels of land in question were registered in the name of a Katheru Kaurugo who died in 16.10.2012. They therefore contend that 1st respondent (the District Land Adjudication & settlement officer, Karama Adjudication section) acted ultra vires when he purported to preside over a dispute to distribute the estate of a deceased person.
3. The respondents (Attorney General) filed grounds of opposition on 29.11.2017, averring that the suit offends the provisions of the land consolidation Act.
4. A memorandum of appearance was filed on behalf of the interested parties but no other documents were filed for this party.
5. The suit was heard by way of written submissions. However, only the ex parte applicant filed submissions.
6. The Ex parte Applicant has cited the case of **Republic versus. Milimani, Commercial court Chief Magistrate & another, ex parte AIG Insurance Co. Ltd (2010) eKLR** where it was held that: "*Certiorari lies to quash decisions made without or in excess of jurisdiction or where there has been breach of rules of natural justice*".

7. The Exparte Applicant submits that pursuant to provisions of section 2 of the law of succession Act, the District Land Adjudication Officer had no jurisdiction to distribute the estate of a deceased person.

8. The first page of the objection proceedings indicate that the law applied was the land consolidation Act. The preamble of this Act provides that: *“It is an Act of Parliament to provide for the ascertainment of rights and interests in, and for the consolidation of land in the special areas...”*.

9. Section 13 (1) of the Act provides that: *“Every individual person claiming any right or interest in any land within an adjudication section, and any person whose presence is required by a Committee or Arbitration Board, shall attend in person, or by representative according to African customary law, as required by the Committee or Arbitration Board, at the time and place specified in the warning referred to in section 12 of this Act”*.

10. Section 13 (4) of the Act provides that *“Where one or more of several heirs of a deceased person, or one or more out of a group of heirs, claiming a separate interest from another group or groups appears, his or their appearance shall be deemed to be the appearance of all such heirs or all such groups, as the case may be, unless the Committee otherwise directs”*.

11. Section 26 of the same Act provides that; *“Any person named in or affected by the Adjudication Register who considers such Register to be inaccurate or incomplete in any respect, or who is aggrieved by the allocation of land as entered in the Adjudication Register, may, within sixty days of the date upon which the notice mentioned in section 25 of this Act is published at the office of the Regional Government Agent within whose district the adjudication area to which such Register relates is situated (and such date shall be endorsed upon the said notice), inform the Adjudication Officer, stating the grounds of his objection”*.

12. The statute therefore allows **ANY PERSON** who is claiming a right or an interest in land to lodge a claim. In *Misc. Judicial review no. 19/2015 Meru – Republic vs Attorney General & 3 others and Tarasila Nyoroka & another as exparte applicants*, I held that *“The purpose of the proceedings before the land adjudication officer is to ascertain rights and interest in community land”*. In the aforementioned case, I had quoted the decision of **Tobias Achola Osidi & 13 others vs Cypriano Otieno Ogola & others H.C.C.C No. 4 of 204 Kisii** where Judge Okango had observed that *“A claim for an interest in land made under the Land Adjudication Act, Cap. 284, Laws of Kenya, following the declaration of an area as an Adjudication Area or an Adjudication Section cannot be equated to a claim before this court. A claim under the Act pursuant to section 13 thereof can be made by every person who considers that he has an interest in land within an adjudication section”. A claim under section 13 of the Act can be made by successors of a deceased person and not necessarily the deceased’s legal representatives.”*

13. In the Tobias Achola case, the statute applicable was the Land Adjudication Act. The said act has similarities with the Land Consolidation Act in that the two statutes primarily deal with ascertainment of rights and interests in land held under a communal tenure system in order to transition to individual tenure holding.

14. If a claim under the Land Consolidation Act can be made by successors of a deceased person, then in the same manner can a claim be made against such successors of a deceased person. The rationale herein is that before the Adjudication process can be termed as **FINALE** through the completion of the Adjudication Register, the rights and interest of the parties are still in the realm of **ASCERTAINMENT** which entails a rigorous process of Recording of rights and interests in land, consolidation and demarcation thereof in accordance with the native law and customs. Against this back ground, section 2 of the law of succession Act cannot be said to be applicable when dealing with ascertainment of rights and interests in land.

15. The upshot of my findings are that the DLASO, 1st Respondent had jurisdiction to deal with the objection proceedings.

16. I therefore find that the suit is not merited. The same is dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 26TH DAY OF SEPTEMBER, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Both Exparte Applicants present

Mwirigi for applicant

HON. LUCY. N. MBUGUA

ELC JUDGE



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