



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. MISC. E058 OF 2021

SAMUEL DOMNIC MUATHE C/O

PARK TOWERS LIMITED.....APPLICANT

VERSUS

ATTORNEY GENERAL.....1ST RESPONDENT

INSPECTOR GENERAL OF POLICE.....2ND RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS OFFICER,

KAMKUNJI STATION.....3RD RESPONDENT

RULING NO. 3

1. Samuel Dornic Muathe, the Applicant herein, has filed a Chamber Summons application dated 22nd April 2021, wherein he is seeking the following orders:

1. **This application be certified urgent and be heard on a priority basis dispensing with service in the first instance due to its urgency.**
2. **Leave be granted to the Applicant to apply for:-**
 - a) **an ORDER OF MANDAMUS to compel the Inspector General of Police through the Director of Criminal Investigations Officer Kamkunji Police Station to restore and or reinstate the applicant and his employees to his previous position as the true court appointed sole agent of the L.R NUMBER 209/8408 and L.R NUMBER 209/8409 situated along Landies road, Nairobi and to compensate the Applicant from the day of his removal to date.**
 - b) **an ORDER OF PROHIBITION against the Respondents from further interdicting, suspending or interfering, harassing, intimidating the Applicant and employees at there designated work station.**
 - c) **Damages arising from the matters herein and interest thereon.**
3. **If leave is granted, a direction that the hearing of the judicial review be expedited.**
4. **Costs of this Application and the entire proceedings be awarded to the Applicant**

2. The application is supported by a statutory statement dated 22nd April 2021, and a verifying and supporting affidavit sworn on the same date by the Applicant. The main ground for the application is that the Applicant is the Court's appointed sole agent of Park Towers Limited, and was unfairly and unlawfully interdicted from managing and maintaining the said property on L.R. NO. 209/8408 and 209/8409 by the 2nd Respondent acting through the 3rd Respondent.

3. Further that the 3rd Respondents colluded with unknown group of people to defeat justice by not honouring the judgment and decree pronounced on 12th October 1998 in **Milimani High Court Commercial Court Civil Case 871 of 1997**. The Applicant annexed a copy of the said decree, and copies of correspondence with the Respondents.

The Determination

4. I have considered the Chamber Summons application dated 22nd April 2021, and the applicable law for leave to commence judicial review proceedings, namely *Order 53 Rule 1* of the Civil Procedure Rules. The main reason for the leave as explained by Waki J. (as he then was), in **Republic vs. County Council of Kwale & Another Ex Parte Kondo & 57 Others, Mombasa HCMCA No. 384 of 1996**, is to ensure that an applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration.

5. it is also trite that the Court then ought not to delve deeply into the arguments of the parties, but should make cursory perusal of the evidence before it and make the decision as to whether an applicant's case is sufficiently meritorious to justify leave. It was in this regard explained by Lord Bingham in **Sharma vs Brown Antoine (2007) 1 WLR 780**, that a ground of challenge is arguable if its capable of being the subject of sensible argument in court, in the sense of having a realistic prospect of success.

6. In the present application, the Applicant has provided copies of the decree issued in **Milimani High Court Commercial Court Civil Case 871 of 1997**, and of letters exchanged with the Respondents, and has also averred as to the reasons why he considers the Respondents' actions to be unlawful. To this extent I find that the Applicant has met the threshold of an arguable case, and is therefore entitled to the leave sought to commence judicial review proceedings against the Respondents.

7. This Court however notes that the Applicant claims that the Respondents have interdicted his agency with Park Towers Limited, which entity will therefore be directly affected by this suit, but has not been joined herein as party. The interests of justice and fair administrative action require that the said Park Towers Limited is given an opportunity to be heard in these proceedings.

The Disposition

8. In light of the foregoing observations and findings, the Applicant's Chamber Summons dated 22nd April 2021 is found to be merited to the extent of the following orders:

I. Park Towers Limited is joined in this suit as an Interested Party.

II. The Applicant is granted leave to apply for an order of Mandamus to compel the Inspector General of Police through the Director of Criminal Investigations Officer Kamukunji Police Station to restore and or reinstate the applicant and his employees to his previous position as the true court appointed sole agent of the L.R NUMBER 209/8408 and L.R NUMBER 209/8409 situated along Landies road, Nairobi and to compensate the Applicant from the day of his removal to date.

III. The Applicant is granted leave to apply for an order of Prohibition against the Respondents, prohibiting them from further interdicting, suspending or interfering, harassing, intimidating the Applicant and employees at their designated work station.

IV. The Applicant is granted leave to apply for Damages arising from the matters herein and interest thereon.

V. The costs of the Applicant's Chamber Summons dated 22nd April 2021 shall be in the cause.

VI. The Applicant shall file and serve the Respondents and Interested Party with the substantive Notice of Motion and submissions thereon, and shall also serve the Respondents and Interested Party with the Chamber Summons dated 22nd April 2021, a copy of this ruling, and a mention notice, within fourteen (14) days from today's date.

VII. Upon being served with the said pleadings and documents, the Respondents and Interested Party shall be required to file their responses to the substantive Notice of Motion and submissions thereon within fourteen (14) days from the date of service by the *ex parte* Applicant.

VIII. This matter shall be mentioned virtually by video link on 12th July 2021 at 3.p.m. for further directions.

IX. In view of the Ministry of Health directives on the safeguards to be observed to stem the spread of the current COVID-19 pandemic, this Court shall hear and determine the Applicant's substantive Notice of Motion on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.

X. All the parties shall file their pleadings electronically, by filing them with the Judiciary e-filing system, and send copies by electronic mail to the Deputy Registrar of the Judicial Review Division at judicialreview48@gmail.com and asunachristine51@gmail.com.

XI. The service of pleadings and documents directed by the Court shall be by way of personal service and electronic mail, and in the case of service by way of electronic mail, the parties shall also email a copy of the documents so served to the Deputy Registrar of the Judicial Review Division at judicialreview48@gmail.com with copies to asunachristine51@gmail.com.

XII. The parties shall also be required to file their respective affidavits evidencing service in the Judiciary's e-filing system.

XIII. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for virtual

hearing on 12th July 2021 at 3.pm, and shall avail to the parties the electronic link for the hearing.

XIV. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the Applicant by electronic mail by close of business on Thursday, 27th May 2021.

XV. Parties shall be at liberty to apply.

9. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 26TH DAY OF MAY 2021

P. NYAMWEYA

JUDGE