



**Republic v Land Registrar, Ruiru & another; Glafjecs Company Limited (Interested Party); Rafiki Microfinance Bank Limited (Exparte Applicant) (Judicial Review E003 of 2022) [2023] KEELC 20365 (KLR) (25 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 20365 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
JUDICIAL REVIEW E003 OF 2022  
BM EBOSO, J  
SEPTEMBER 25, 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE LAND REGISTRAR, RUIRU ..... 1<sup>ST</sup> RESPONDENT**

**JOHN GATUA MUKUHI ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**GLAFJECS COMPANY LIMITED ..... INTERESTED PARTY**

**AND**

**RAFIKI MICROFINANCE BANK LIMITED ..... EXPARTE APPLICANT**

**JUDGMENT**

1. Through a notice of motion dated 4/5/2022, the exparte applicant, Rafiki Microfinance Bank Limited, seeks an order of mandamus compelling the Ruiru Land Registrar to cancel the parallel title and the parallel land register that exist in the name of John Gatua Mukuhi in relation to land parcel number Ruiru/Kiu Block 2 (Githunguri)/2077. The exparte applicant contends that on 31/1/2022, the Principal Magistrate Court at Ruiru [Hon Agonda] rendered a Judgment in Ruiru SPMC E & L Case No E11 of 2020 in which it found that the exparte applicant’s statutory power of sale had accrued and gave the exparte applicant the go-ahead to exercise its statutory power of sale. It is the case of the exparte applicant that it has not been able to exercise its statutory power of sale because the Land Registrar at Ruiru has failed to cancel the illegal parallel land register and the illegal parallel title that exist in the name of John Gatua Mukuhi.



2. The Attorney General entered appearance on behalf of the 1st respondent and filed grounds of opposition dated 12/7/2022. The Attorney General, through Jonathan Mwambonu, Senior State Counsel, opposed the motion on the basis of the following verbatim grounds:
  1. That the substantive order to compel cancellation of title sought by the applicant cannot be granted in judicial review proceedings.
  2. That the judicial review application is premature and incompetent in that the applicant failed to dispute the 2nd respondents title over the suit property in its counterclaim at the lower court case, Ruiru MC ELC No 11 of 2020 Glafjecs Company Ltd vs Rafiki Microfinance & Another.
  3. That the judicial review application is premature and incompetent in that the judgment of the lower court case, Ruiru MC ELC No 11 of 2020 Glafjecs Company Ltd vs Rafiki Microfinance & Another never addressed the 2nd respondent's title.
  4. That the judicial review application is unmerited in that the applicant herein ought to have instituted an ordinary civil suit by way of a plaint in accordance with Section 19 of the *Civil Procedure Act* and Order 3 of the Civil Procedure Rules considering that there are competing claims over the suit property.
  5. That the suit is an abuse of the court process.
  6. That based on the foregoing, the application is devoid of any merit and the orders sought should not be granted.
3. I have considered the motion alongside the verifying affidavit, the statutory statement, the 1st respondent's grounds of opposition and the ex parte applicant's written submissions. The single question to be answered in this Judgment is whether the ex parte applicant has made out a case for the judicial review order of mandamus.
4. The ex parte applicant contends that there exists a parallel land register and a parallel title in the name of John Gatua Mukuhi relating to the suit property. It is his case that the said land register and title are illegal. He wants the Land Registrar compelled to cancel them. The platform which the ex parte applicant has elected to use to obtain the cancellation order is the judicial review motion under consideration.
5. The ex parte applicant has exhibited and relies on the Judgment rendered by Hon J A Agonda on 31/1/2022 in Ruiru SPMC E & L Case No E11 of 2020. A perusal of the said Judgment reveals that the Principal Magistrate Court identified the following as the verbatim key issues that fell for determination in the suit: (i) Whether the contract entered into between the parties is legally and valid and binding; (ii) Whether interest rates and bank charges debited to the plaintiff's account was found in good faith and whether plaintiff indebted to the 1st defendant?; (iii) Whether 1st defendant is entitled to exercise its statutory power of sale over the suit property?; (iv) Whether the public auction of suit property that was to be held to recover the alleged debt outstanding was Kshs. 6,447,718/= as at 3rd February, 2020 was lawful and valid; (v) Whether plaintiff is entitled to an award of the said damages or at all?



6. It does also emerge from a perusal of the Judgment that the Principal Magistrate Court issued the following verbatim disposal orders in the said Judgment:
  1. The 1st defendant is at liberty to exercise his power of sale upon issuing the plaintiff with proper notices and filing of valuation report in court. The report to be prepared and submitted to the court within 14 days from the date of judgment.
  2. A declaration be and is hereby made that the purported advertisement and public auction of the suit property held by the 1st defendant was regular, and legal and that the statutory power of sale had properly accrued in favour of the 1st defendant.
  3. Costs of the suit.
7. It is clear from the Judgment that the trial court found that the ex-parte applicant's statutory power of sale had accrued. It is also clear from the judgment that the trial court did not identify the question of legality of the parallel land register and the parallel title as one of the key issues that fell for determination in the suit. Further, it is clear that the trial court did not pronounce itself on the question of the legality of the parallel land register and the parallel title.
8. Is the judicial review motion the appropriate platform on which to adjudicate the issue relating to the legality and validity of the parallel land register and the parallel title? Is the judicial review order of mandamus the appropriate relief to address the exparte applicant's grievance? I do not think so. Given that the question of validity of the parallel land register and parallel title was not adjudicated upon by the Ruiru Principal Magistrate Court, the proper platform on which to obtain an adjudication on the issue is a normal civil suit initiated by way of a plaint. The civil suit will afford the holders of the impugned title the opportunity to demonstrate why the parallel land register and the parallel title should not be cancelled. The ex-parte applicant and all the affected parties will have the opportunity to place before court all necessary oral and documentary evidence to enable the court adjudicate the issue effectually and completely.
9. Indeed, the Court of Appeal emphasized this legal position in *Njuguna & 5 others v Sogomi & another* (Civil Appeal No 12 of 2018) [2021] KECA 37 [KLR] 23 September 2021) as follows:

“as the situation in the instant case the ownership of the subject property is contested, and the question as to who between the appellants and the 3rd respondent is the rightful owner remains an issue that still needs to be determined. As the remit of the court under judicial review is limited to the decision making process, a substantive suit, and not judicial review proceedings, is the more appropriate forum within which to resolve the ownership question.”
10. Given that the issue of legality of the parallel land register and the parallel title has not been adjudicated and determined on the platform of a normal civil suit, it would be premature to order the Land Registrar to cancel the parallel land register and title. The proper procedure is for the ex-parte applicant to institute a suit by way of plant and procure a determination of the issue. At this point, I do not think this court would be acting appropriately if it were to use the platform of a judicial review motion to pronounce itself on the validity or otherwise of the parallel register and the parallel title. In any event, no evidence has been presented to this court relating to the question of validity of the parallel land register and the parallel title.



11. I have said enough on why the judicial review motion is premature and inappropriate at this point. I will, in the circumstances, strike out this suit on the ground that it was initiated prematurely. It is so ordered.
12. Taking into account the nature of the present proceedings, parties will bear their respective costs of the suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 25TH DAY OF  
SEPTEMBER 2023**

**B M EBOSO**

**JUDGE**

