



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

ELC JUDICIAL REVIEW NO. 9 OF 2017

IN THE MATTER OF: ARTICLES 22, 23, 40, 47, & 50 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: THE LAND REGISTRATION ACT, 2012 AND FAIR ADMINISTRATIVE ACTIONS ACT 2015

AND

IN THE MATTER OF: THE LAW REFORM ACT CAP 26 LAWS OF KENYA

AND ORDER 53 OF THE CIVIL PROCEDURE RULES

AND

IN THE MATTER OF: REPUBLIC.....APPLICANT

VERSUS

CHIEF LAND REGISTRAR.....1st RESPONDENT

THE HON. ATTORNEY GENERAL.....2nd RESPONDENT

AND

JANE GATHIGIA GATIMU.....INTERESTED PARTY

EX PARTE

NJOROGE KAIGIRIRI alias STEPHEN NJOROGE KAMUGA.....SUBJECT

RULING

1. By a Notice of Motion dated 30th March, 2017 brought under Section 8 and 9 of the Law reform Act and Order 53 Rules 1(1),(2) and (3) of the civil Procedure Rules and all enabling provisions of the law where the ex-parte applicant herein, **Njoroge Kaigiriri alias Stephen Njoroge Kamuga**, seeks the following orders:

i. That an order of certiorari do issue to remove to this court and quash the ruling of the 1st Respondent given on the 10th February 2017.

ii. Cost of this application for leave and substantive motion be provided for.

2. The application was premised on the grounds on the face of the application as well as the annexed affidavit sworn **by the ex-parte applicant Njoroge Kaigiriri alias Stephen Njoroge Kamuga on the 28th March 2017.**

3. Directions were taken to the effect that the application be disposed of by way of written submissions. Pursuant to this application being served, the interested party herein filed an application dated the 12th June 2017 seeking for orders to issue against the Applicant herein to furnish security in court in lieu of the stay orders he was enjoying as against the party in respect to land parcel No. Nyandarua /Ndemi/570.

4. Before Directions could be taken, the interested party herein filed yet another application dated the 19th June 2017 seeking for interim injunctive orders against the Applicant herein.
5. Pursuant to the filing of these applications, the Applicant herein filed his notice of preliminary objection dated the 13th July 2016 to the effect that the two applications filed by the interested party were incompetent and bad in law and that the court lacked jurisdiction to entertain them.
6. Direction were taken that parties do file their respective responses to the Applications and that the matter be scheduled for hearing interpartes for the 27th September 2017 on which day neither party had filed their submission to the application dated the 19th June 2017. The court directed that service be effected to the Hon attorney general and the matter was adjourned yet again to the 27th November 2017 on which day the court was informed that the Hon Attorney General had not filed his response thus parties had not filed their submissions.
7. The court adjourned the matter yet again to the 20th February 2018 whereupon only counsel for the Applicant appeared and prayed to have his application dated 13th July 2017 be marked as abandoned as well as the two applications dated 12th June 2017 and 19th June 2017 which had never been prosecuted.
8. The court placed the file aside to await counsel for the other party to arrive. At 10:00 am, when there was neither appearance by Counsel for the interested party nor a State Counsel from the office of the Hon Attorney General, the court accepted the submission by the Counsel for the Applicant to have his application dated the 30th July 2017 set down for ruling as he had complied with the orders to file his submission while the other parties had not filed their respective submissions.
9. Briefly, the Applicant's grievance is to the effect that upon sub division of plot No. 860 Ndemi Settlement Scheme into six (6) portions therefore giving rise to Nos. Nyandarua/Ndemi/ 4187-4192, he sold three portions and retained titles Numbers 4187, 4188 and 4189.
10. That in the year 2012 the interested party lodged a boundary dispute complaint with the land Registrar that the Applicant had encroached onto her land. After the hearing of the dispute, the Land registrar made a finding that there was no boundary dispute but a land claim and that parties should move to court for determination.
11. That the interested party instead of moving to court, and without informing him, filed an appeal with the Chief land Registrar(1st Respondent) who delivered his ruling on the 10th February 2017 without the input of the Applicant who was not made aware of the proceedings, hiving off part of his land and thus rectifying the land Register.
12. The applicant's submission was therefore to the effect that the 1st Respondent had no jurisdiction to sit on appeal against the ruling of the Land Registrar, Nyandarua /Samburu issued on the 10th December 2012 which ruling was made in respect of a parcel of land whose title that had already been closed on sub-division.
13. That this action was an affront to the ex-parte applicant's Constitutional right to property and due process of the law.
14. The Applicant therefore came to court seeking that it exercises its supervisory jurisdiction over quassi judicial bodies to issue an order of certiorari against the said ruling of the 1st Respondent herein, leave to file judicial review having been granted on the 29th March 2017.
15. Pursuant to the Applicant's submissions filed on the 20th February 2018, to this application by way of Notice of motion dated the 30th March 2017, he submitted that pursuant to the provisions of Article 40(2) (a), 47(1) (2)50(1) of the Constitution and Section 86 (1) of the Land Registration Act, the chief land Registrar herein the 1st Respondent had no jurisdiction to sit on appeal against the decision of a land Registrar. In support of his submission, the Applicant relied on the decided cases of

i. Multiple Hauliers East Africa Ltd vs Attorney General and 10 others [2013] ekLR

ii. Evelyn College of Design Ltd vs Director of Children's Department and Another [2013]eKLR

iii. Republic vs Kenya Medical Practitioners & Dentists Board & 2 Others [2013]eKLR

iv. Republic vs Judicial service Commission ex parte Pareno [2004]KLR at 204

v. Kenya National Examinations Council ex-parte Geoffrey Githinji and 9 Others Civil appeal No. 266 of 1996

vi. Pastoli vs Kabale District Local Government and Others [2008]2EA 300

16. It is worth noting that this application was not opposed as the Interested party as well as the Respondents herein filed neither their responses nor submissions to this application despite service.

17. I have carefully considered the said submissions as well as the authorities herein annexed by the applicant. I think the issues for consideration are rather narrow and I will confine myself to what is strictly necessary to determine the dispute between the parties in relation to the application before me. In the circumstances I think that the only issue for consideration is ;

i. Whether the Chief Land Registrar had jurisdiction to sit on appeal against the ruling of the Land Registrar,

Nyandarua/Samburu issued on the 10th December 2012.

18. It is also trite that in Judicial Review, the Court does not deal with the merits of the case but only process of administrative decision making. In **Commissioner of Land v. Kunste Hotel Ltd**, (1995-98) EA the Court of Appeal held that –

*“Judicial review is not concerned with private rights or the merits of the decision being challenged but with the decision-making process. Its purpose is to ensure that an individual is given fair treatment by an authority to which he has been subjected (**Republic v. Secretary of State for education and Science ex parte Avon County Council** [1991] 1 ALL ER 282 and **Chief Constable of the North Wales Police v. Evans** [1982] 1 WLR 1155 adopted)*

19. In this matter, the applicant confirmed that the ruling of the Land Registrar, Nyandarua /Samburu was issued on the 10th December 2012 wherein the interested party filed an appeal with the Chief land Registrar(1st Respondent) who delivered his ruling on the 10th February 2017.

20. The transaction of the suit land herein having been governed under the repealed Registered Land Act and Section 150(1)(2) of the now repealed Registered Land Act clearly gave provision for persons dissatisfied by decisions made by land Registrars to lodge their Appeal's to the Chief Registrar. The same provided that:

(1) If a person is dissatisfied by the refusal of the Deputy Chief Land Registrar, a Land Registrar or an Assistant Land Registrar to effect or cancel any registration, he may, within thirty days of the refusal, appeal in the prescribed form to the Chief Land Registrar, and the Chief Land Registrar may direct that the registration be effected or cancelled, as the case may require, or may uphold the refusal.

(2) The Minister or any person aggrieved by a decision, direction, order, determination or award of the Chief Land Registrar may, within thirty days of the decision, direction, order, determination or award, give notice to the Chief Land Registrar in the prescribed form of his intention to appeal to the High Court against the decision, direction, order, determination or award.

21. Further pursuant to The Land Laws (Amendment) Act, 2016, Section 8 of the said Act amended Section 14 of the Land Registration Act by widening the scope and powers of the Chief Registrar and taking cognizance of the Appeal process to the effect that:

Section 14 (2) of the Land Registration Act provides as follows:-

((2) In addition to the powers conferred by section 14(1) the Chief Land Registrar shall-

- (a) formulate practice instructions and guidelines for implementation of the land registration policies and strategies;*
- (b) set standards for the registries;*
- (c) supervise the registries;*
- (d) prepare and submit an annual report on the state of land registration to the Commission and the Cabinet Secretary,*
- (e) hear and determine appeals from the registries;*
- (f) approve the format of any instrument which is not in accordance with the prescribed form; and*
- (g) perform such other functions or duties as may be provided under any written law*

22. It would appear to me from reading of the above provisions that the 1st Respondent herein has wide powers which includes but is not restricted to the hearing and determining of appeals from the registries.

23. I find that since the law provides an avenue for parties who are aggrieved by decisions made in the registries to ventilate their grievance, through the appeal process, to the Chief Land Registrar, the Applicant herein cannot be heard to say, in my humble opinion, that the 1st Respondent had no jurisdiction to sit on a n appeal from the Land Registrar herein.

24. The upshot of all the foregoing is that I find no merit in the application dated 30th March, 2017 and proceed to dismiss it with no costs.

Dated and delivered at Nyahururu this 26th day of April 2018.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE