



Chivatisi v Chief Land Registration Officer Kilifi County & another; Vue & 3 others (Interested Parties) (Environment and Land Judicial Review Case E003 of 2023) [2023] KEELC 21842 (KLR) (30 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21842 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E003 OF 2023

FM NJOROGE, J

NOVEMBER 30, 2023

IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF CERTIORARI

AND

IN THE MATTER OF: ARTICLE 10, 20, 23, 40, 60, 73(1) & (2), 159 & 259 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF: ABUSE OF OFFICE AND STATUTORY DUTY, GROSS TRANSGRESSION, IRRATIONNALITY, ILEGAL & UNLAWFUL ACTION TO UNLAWFULLY AND FRAUDULENTLY REGISTER TITLE NO. KILIFI/VVYAMBANI/92 IN THE NAMES OF VUE TAURE VUE AND TSORI A CLEAR VIOLATION OF THE ORDERS ISSUED BY LADY JUSTICE (DR.) MA. ODENY ON 19TH JANUARY, 2023

AND

IN THE MATTER OF: SECTIONS 8 AND 9 OF THE FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015; SECTION 9 AND 10 PUBLIC OFFICER ETHICS ACT, CAP 183 LAWS OF KENYA, SECTIONS 14, 24, 25, 76, 77, 78 & 80 OF THE LAND REGISTRATION ACT AND ORDERS 53 RULE 3 (1) OF THE CIVIL PROCEDURE RULES, 2010.

AND



IN THE MATTER OF: LAND REGISTRATIN (GENERAL REGULATIONS, 2017

BETWEEN

FELIX TSORI CHIVATISI APPLICANT

AND

CHIEF LAND REGISTRATION OFFICER KILIFI COUNTY 1ST RESPONDENT

HON. ATTORNEY GENERAL 2ND RESPONDENT

AND

VUE TAURA VUE INTERESTED PARTY

ANTONY KIRINGI TSORI INTERESTED PARTY

DANCAN JAMES WATTA INTERESTED PARTY

NEWLIFE PRAYER CENTRE AND CHURCH INTERESTED PARTY

RULING

1. This ruling is in respect of Notice of Motion dated 5th June, 2023 by the Applicant seeking the following Orders:
 1. That this application be certified as urgent and be heard as a matter of priority in this matter.
 2. That pending the hearing and determination of this application, a notice to show cause be issued against the 1st Respondent to show –cause why he should not be punished for contempt of the court orders issued on 21st February, 2023.
 3. That the 1st Respondent be held in contempt of court orders given on 21st February, 2023 for their act of interfering with the status of the suit properties by illegally registering a transfer on the property known as Kilifi/Vyambani/356 in favour of Vue Taure Vue and Tsore Sudi post the issuance of the order dated 21st February, 2023.
 4. That the court be pleased to order that the 1st Respondent be committed to prison for a period of six (6) months for contempt of court order given on 21st February, 2023 or any other appropriate sanction or penalty including a sequestration of the personal properties of the 1st Respondent.
 5. That the 1st Respondent herein do meet the costs of this application.
2. The background to the present committal application is that the applicant filed a chamber summons for leave to file a judicial review application on 17/2/2023 and secured leave from this court on 20/2/2023 to file the main judicial review notice of motion, which it filed on 3/3/2023. The order of 23/3/2023 issued by this court read as follows:

“Tentative stay of registration pending the hearing of this application. parties to file submissions within 14 days. Mention on 27/6/23.”



3. The next thing that was filed in this court file was the present application seeking the orders as set out at the commencement of this ruling. The grounds upon which the present application is made are contained in the application and the supporting affidavit. They are that the 1st respondent, despite service on him of the order of stay, and with full knowledge regarding the pending judicial review notice of motion, breached the said order of stay by proceeding to register the impugned reversion against the property of the applicant. It is alleged that the said action will undermine the rule of law and is likely to cause substantial and irreparable losses to the applicant.
4. The 1st respondent replied to the application vide a sworn replying affidavit of one J.B. Oketch, Land Registrar, Kilifi, dated 19/6/2023. He deposed that in 2005 the suit land was registered in the name of one Felix T. Chivatsi and title deed issued; that a restriction was registered in favour of one Janet Tatu in 2012; that Janet later applied to have the restriction removed which was done in 2013; that in the same year the title deed was closed on registration of mutation; that on 8/11/22 the Land Registrar was served with a decree and judgment in ELC 184 of 2013; that after verifying the judgment and decree were genuine the office proceeded to rectify the register as per the decree in favour of Vue Taure Vue and Tsore Chiwal Sudi and a title deed was issued. The deponent stated that he was not aware of the court order dated 19/1/2023 dismissing Malindi ELC 184 of 2013. He stated that he has never been served with any other court order other than the decree and judgment aforementioned. He averred that the applicant appears to be appealing against the decision in the former case, but using the wrong procedure of judicial review herein.
5. Alongside the replying affidavit, Catherine Someren, Litigation Counsel from the Attorney General's Chambers filed grounds of opposition stating, inter alia, that the applicant has not identified the person he is seeking the committal orders to be issued against and that it is not proper to cite an office having several officers for contempt without specifying a particular officer who had willfully disobeyed a court order. Further, she stated there has not been demonstrated any personal service of the decree upon any person said to be the contemnor.
6. I have examined the prayer seeking stay. It is clear that it was not granted together with the prayer seeking leave. It was granted, if at all, on 23/3/2023 while the prayer seeking leave was granted on 20/2/2023. Whereas the prayer seeking stay was couched as follows:

“...that the grant of leave do operate as stay of the 1st respondent's impugned decision contained in the instrument for registration of reversion pending the hearing and determination of the substantive motion...”

the order granting stay was couched as per paragraph 2 herein above. In so far as it appears that the court had become functus officio after granting the leave on 20/2/2023 without contemporaneously granting stay; it never referred to that Chamber Summons application while granting the stay order set out verbatim in paragraph 2 herein above; it did not state that the leave granted earlier do operate as stay.
7. There is no specificity that the document intended to be barred from registration was the instrument of reversion or any other document. I therefore find little correlation between the prayer for stay and the stay order actually granted on 23/3/2023.
8. The order of stay being unclear as to what registration was barred, it is not certain that it was breached and it is therefore not possible to hold any person culpable for its breach.
9. The second ground relied on by the 1st respondent is that the application does not seek to cite any specific person for contempt. I find that it is necessary for an application for committal to pinpoint with accuracy the person who is alleged to have breached a court order and the manner in which he



is said to have committed the said breach. As the application at hand lacks those specifics, it is fatally flawed and it must fail.

For the reasons afore stated the applicant's notice of motion dated **5/6/2023** is hereby dismissed with no order as to costs.

Dated, signed and delivered at Malindi on this 30th day of November 2023.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

