



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**CONSTITUTIONAL & JUDICIAL REVIEW DIVISION**

**JUDICIAL REVIEW NO. 8 OF 2017**

**IN THE MATTER OF: THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION AND PROTECTION AND FUNDAMENTAL RIGHTS AND FREEDOM OF THE INDIVIDUAL) HIGH COURT PRACTICE AND PROCEDURE RULES, 2013 ARTICLES 40(1), (2), (3), (4), (5) AND (6) OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF: THE CIVIL PROCEDURE ACT CAP 21 LAWS OF KENYA AND THE CIVIL PROCEDURE RULES ORDER 53 RULE 1 (2)**

**AND**

**IN THE MATTER OF: THE LAND AND REGISTRATION ACT 2012**

**AND**

**IN THE MATTER OF: THE ESTATE OF MOHAMMED BASHIR MERAJ DIN AHMED BUX**

**AND**

**IN THE MATTER OF: AN APPLICATION FOR FILING JUDICIAL REVIEW PROCEEDINGS FOR ORDERS OF MANDAMUS, PROHIBITION AND CERTIORARI**

**BETWEEN**

**MOHAMED SHAHID MOUGHAL**

*(suing for and on behalf of Samera Aziz*

*the Administrator of the Estate of*

*Mohamed Bashir Meraj Din Ahmed Bux) ..... APPLICANT*

**AND**

**1. THE COMMISSIONER OF LANDS**

**2. THE REGISTRAR OF LANDS, MOMBASA COUNTY**

**3. DOUGLAS MWANGI MUTERU**

**4. SAMUEL WACHIRA**

**5. WESTMALL SUPERMARKET LIMITED**

**6. HON. ATTORNEY-GENERAL ..... RESPONDENTS**

## RULING

1. From the outset this court wishes to make it clear to the parties that this is not the Ruling that was expected on the Notice of Motion application dated 16<sup>th</sup> May, 2017. Arising from the submissions of the parties it became clear to the court that apart from the application for Judicial Review orders before the court, there are also the following other matters going on concurrently involving the suit property –

(i) High Court Civil Case No. 373 of 2010 filed in the ELC where the Applicant claims the ownership of the suit property. The said matter is part heard and the Applicant herein has already testified in the suit.

(ii) Chief Magistrate's Criminal Case No. 342 of 2017 where the Applicant is the complainant where the allegation is that the suit property was fraudulently transferred to the 3<sup>rd</sup> Respondent herein.

2. At the time of filing the application before the court the Applicant did not disclose to this court the above two on-going suits.

3. From the pleadings it is clear that the suit in ELC is brought out to determine the ownership of title to the suit property.

4. The Criminal Case is also ultimately aimed at solving the issue of the ownership of the suit property.

5. These Judicial Review proceedings are also meant to quash the title of the suit property and direct that the Applicant is the owner thereof.

6. In my view all these processes cannot go on concurrently. At least the ELC matter cannot go on together with the Judicial Review matter. One must give way to the other if the court were to avoid an embarrassing situation should there be a conflict in the two decisions of the court.

7. Given that in Judicial Review proceedings oral evidence is not adduced, the ELC would appear to be the most convenient forum in which to determine the issue of ownership of the suit property. The Applicant is at liberty to give the evidence he has attached to his Judicial Review proceedings to the ELC.

8. For the foregoing reasons I make the following orders:

(a) The matter before this court is hereby stayed pending the hearing and determination of the ELC matter.

Orders accordingly.

**Dated, Signed and Delivered at Mombasa this 24<sup>th</sup> day of July, 2018.**

**E. K. OGOLA**

**JUDGE**

In the presence of:

Petitioner in person

Mr. Abdi holding brief Mr. Gikandi for 3<sup>rd</sup> to 5<sup>th</sup> Respondents

Mr. Mwanje holding brief Mr. Wachira for 1<sup>st</sup> and 2<sup>nd</sup> Respondents

Mr. Kaunda Court Assistant