



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**JUDICIAL REVIEW NO. 36 OF 2011**

**REPUBLIC.....APPLICANT**

**-VERSUS**

**NATIONAL LAND COMMISSION.....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**EX-PARTE NDERITU KIRUTHI.....SUBJECT**

**RULING**

1. By Notice of Motion dated 19/6/2017, the applicant sought orders that:-

- (i) THAT this application be certified as urgent and be heard on priority basis.
- (ii) THAT this honourable court do compel the 1<sup>st</sup> Respondent to issue the Applicant with certificate of lease on Temporary Occupation License over TOL parcel of land number 104 Ngorika Township Nyandarua County as per the order and decree issued.
- (iii) THAT the honourable court do issue Notice to show cause to Land Secretary in the Ministry of Lands why execution should not issue
- (iv) THAT there is inordinate delay of issuance of certificate of lease to Applicant since 2013.
- (v) THAT costs of this application be made.

2. The applicant has deponed that the judicial review proceedings were concluded in their favour in 2012 and a decree issued. That a notice to show cause was subsequently issued and that respondents have shown no interest in obeying the Orders.

3. The 2<sup>nd</sup> respondent filed grounds of opposition which were admitted out of time with leave of the court. They object to the jurisdiction of the court on account of **Article 162 (2) (b) of the Constitution** and **Section 13 of the Environment and land court Act**. They also state that the application was based on distortion of facts and misrepresentation.

4. The applicant filed submissions dated 27/10/2018 which the highlighted on 21/11/2017. The respondents made oral submissions. The applicant's submissions dwell mainly on the background to the application.

5. I have considered the application, the grounds of opposition, and the submissions of the parties. It is not clear why the applicant is seeking an order to compel the 1<sup>st</sup> Respondent to issue a lease over the suit land. This is because the order of mandamus was previously granted by the court in the judicial review application brought by the applicant and concluded by **Wendoh J** vide her ruling dated 8/3/2013. Indeed the applicant has attached the decree dated 2/8/2013 issued by the Deputy Registrar of the court. This court cannot therefore reissue the compelling order prayed. It can only issue a notice to show cause as a first step towards contempt proceedings.

6. I have considered the grounds of opposition raised by the respondents. They have stated the application was based on inaccuracies. My perusal of the file and the ruling of **Omondi J** however shows that the applicant has restated the correct position. The respondent has not shown that an order of mandamus was not granted or attempted to explain why the order has not been complied with. With respect to the objection on jurisdiction, it is clear from the proceedings that this matter was heard and concluded by the high court prior to the establishment of the Land and Environment court. The record shows that parties had appeared before the ELC court on 6/9/2017 and the

court (**Munyao J**) correctly directed that the attendant application be concluded in the High Court. The objection therefore has no basis and must be dismissed.

7. In the end, the order that commends, itself to me is that a final Notice to show cause does issue to the respondents and that the hearing of such notice be expedited.

8. The applicant shall also have the costs of this application.

Orders accordingly

**Ruling signed at Garsen on 20<sup>th</sup> day of June 2018.**

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**R. LAGAT KORIR**

**JUDGE**

**Ruling delivered dated and Counter signed at Nakuru this 2<sup>nd</sup> day of August, 2018.**

.....

**JANET MULWA**

**JUDGE**

**In the presence of**

.....CA

.....for applicant

.....for respondent