



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAROK

JUDICIAL REVIEW NO. 2 OF 2016

FATUMA MOHAMUD MOHAMMED.....APPLICANT

VERSUS

THE NATIONAL LAND COMMISSION.....RESPONDENT

RULING

1. The proposed interested party applied under certificate of urgency to be enjoined as a party to these proceedings. The application was duly certified as urgent. The application which is brought by way of notice of motion is supported by 7 grounds on the face of the notice of motion. The following are the major grounds in support of that motion.

The proposed interested party has stated that it is the allottee of plot No. 143 block 11 Narok which is the subject matter that has given rise to the decision that is being challenged by the ex-parte applicant (Fatuma Mohamud Mohammed). It has further stated that the matter that is under challenge is in respect of the parcel of land which unless it is granted leave to be enjoined shall be gravely prejudiced. It has further stated that it is in the interest of justice that the proposed interested party be enjoined to the judicial review proceedings to enable it defend and protect its interests. And finally, the proposed interested party has stated that is necessary that he be enjoined as a party in order to avoid a multiplicity of suits.

2. In addition to the grounds set out in the notice of motion there is a supporting affidavit sworn by Mohammed Hassan Eunice. He has deponed to the following major matters.

1. He has averred that it is the allottee of plot No. 143 block 11 Narok, which is the subject matter that is under challenge in this judicial review proceedings. He has annexed an allotment letter marked "MHY".

2. He has stated that the outcome of the judicial review proceedings would affect the Narok Muslim Welfare Society which is the allottee of the said parcel of land. Finally, the proposed interested party has averred that they should be enjoined in order to afford them an opportunity to canvass the ex-parte's application. This he says would ensure that they are not prejudice by the orders which this court may issue. Additionally, he has averred that they would suffer irreparable harm and damage if the orders sought are not granted.

3. The ex-parte applicant (Fatuma Muhamud Mohammed) has filed a 10 paragraphs replying affidavit in opposition to the application of the proposed interested party. In that affidavit, she has deponed to the following major matters.

She has averred that their does exist a leadership dispute within the Narok Muslim Welfare Society and

for that reason, the intended interested party cannot be enjoined in the suit as a chairperson or leader of the society. In this regard, she has annexed a copy of the registrar of societies' letter dated 7/4/2017 which confirms the existence of the dispute. She has also averred that the judicial review proceedings do not relate to either the leadership dispute in the Narok Muslim Welfare Society and is not a land dispute, but it relates to the legal decision of the National Land Commission to evict Bilal Primary school Narok. Furthermore, she has also deponed that her school is in possession of the suit property a bona fide tenant pursuant to an agreement approved by the tender committee of the society which agreement is annexed to her affidavit as annex "FMM3". Finally, she has averred that the Judicial Review Proceedings do not relate to the validity of the agreement between the school and society, but they relate to the letter of eviction dated 12/10/2016 which was issued by the National Land Commission.

4. Counsel for the parties cited authorities in support of their positions in this application which I have considered.

5. In the light of the rival affidavit evidence of the parties, their submissions and the authorities cited, I find the following to be the issues for determination.

1. Whether or not the proposed interested party should be enjoined as a party
2. Who should bear the cost of this application.

First issue: Whether or not the proposed interested party should be enjoined in this suit.

I have perused the letter from National Land Commission dated 12/10/2016. In that letter, it is indicated that the society intends to register the land allocated to them to be registered as a public utility. It has further indicated that the integrated physical plan has been approved. And subject to verification of the documents of ownership the society may be issued with ownership of the same parcel of land. And finally in that letter, it is indicated that there is an alleged illegal developer who is required to vacate the subject land in terms of section 152A and B of the Land Laws (Amendment Act of 2016).

6. In view of the contents of that letter, it is clear that the Narok Muslim Welfare Society appears to have a bona fide interest in the subject land. It cannot be said that it is a busy body. The fact that there is a dispute among the leadership of that society is not a ground for opposing their application to be enjoined as a party. It is in the interest of justice that the 2 opposing groups in that society be enjoined as a party to the judicial review proceedings. This would avoid a multiplicity.

7. Furthermore, the Narok Muslim Welfare Society is an interested party in terms of Order 53 Rule 3 (2) and (3) of the 2010 Civil Procedure Rules. In terms of the provisions of that order, it is mandatory that notice of judicial review proceedings should be served on all persons who are directly affected by those proceedings.

8. Furthermore, I find that the existence of a leadership dispute in the society does not warrant the exclusion of the members of that society from the judicial review proceedings. There are persons who are directly affected by the judicial review proceedings and for that reason, both groups within the leadership dispute should be served with notice of this proceedings. It is up to them to decide whether or not they should or should not participate.

9. In the light of the foregoing considerations, I find that the application of the proposed interested party is meritorious and I hereby allow it. Additionally, the ex-parte applicant should serve both groups within the Narok Muslim Welfare Society with notice of these proceedings. Finally, notice of these proceedings should also be served on the Narok County Government.

10. Issue of costs

The proposed interested party has succeeded in his application to be enjoined as a party. They are entitled to be awarded the costs of this application and I so order.

Ruling delivered this 16th day of November, 2017 in the presence of the ex-parte Applicant and in the absence of the Respondent.

J. M. Bwonwonga

Judge

16/11/2017