



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**JUDICIAL REVIEW CIVIL MISC. APPLICATION NO. 321 OF 2016**

IN THE MATTER OF AN APPLICATION BY SAMUEL GITHEGI MBUGUA, GRACE MUTHONI GITHEGI, MARGARET NYOKABI MBUGUA, CHRISTINE MITHIRI MBUGUA, AND (RUTH WANJIKU, ESTHER NJERI & PAUL NDUNGU) as EXECUTORS OF THE ESTATE OF MARY WARURII GAKUNJU FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF PROHIBITION AGAINST THE NATIONAL LAND COMMISSION.

IN THE MATTER: OF THE CONSTITUTION OF KENYA 2010

**AND**

IN THE MATTER: OF THE NATIONAL LAND COMMISSION ACT NO. 5 OF 2012

**AND**

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

**AND**

IN THE MATTER OF: THE ENVIRONMENT AND LAND COURT ACT 2011

IN THE MATTER OF: HIGH COURT OF KENYA (ELC) NUMBER 557 OF 2009 (MACHETHA KARIUKI & OTHERS VS SAMUEL GITHEGI MBUGUA & OTHERS – PENDING ) AND HIGH COURT PETITION NUMBER 462 OF 2012 (ELC NO. 879 OF 2012)

IN THE MATTER OF: CIVIL PROCEDURE RULES 2010 & THE FAIR ADMINISTRATIVE ACTION ACT 2015

**BETWEEN**

**SAMUEL GITHEGI MBUGUA.....APPLICANT**

**GRACE MUTHONI GITHEGI.....APPLICANT**

**MARGARET MITHIRI MBUGUA..... APPLICANT**

**RUTH WANJIKU, ESTHER NJERI & PAUL NDUNGU AS EXECUTORS OF THE ESTATE OF MARY WARURII GAKUNJU.....APPLICANT**

**VERSUS**

**AND**

**BERNARD W. WANJOHI, FRANCIS W. NJUGUNA AS CHAIRMAN AND SECRETARY OF  
KASARANI ANCESTRAL FAMILIES SELF HELP GROUP.....INTERESTED PARTY**

**RULING ON STAY PENDING JR PROCEEDINGS**

This matter came before me under certificate of urgency on 25th July 2016 for consideration. I certified the matter as urgent and granted the ex parte applicant leave to apply for Judicial Review orders sought, which are for prohibition. The applicant had also sought that such leave granted do operate as stay of proceedings pending before the respondent National Land Commission particularly on 29<sup>th</sup> July 2016 or any other date subsequently until the hearing and determination of the substantive motion. I therefore fixed this matter for today for inter partes mention after directing that the respondents be served with the application, so that the issue of stay of proceedings can be considered inter partes.

Today, Mr Mbuthia counsel the respondent appeared in court and confirmed that their client had been served. He however objected to a stay being granted as the matters herein pleaded are subject of similar proceedings pending before the Environment and Land Court and that parties had in that matter been directed to appear before the respondent National Land Commission. He was of the view that the applicants herein are abusing the court process since these issues are the same as those pending before the Environment and Land Court vide Judicial Review No.582/2016 and that the applicants have not made full disclosure.

In response, Mr Njagi counsel for the applicants submitted that his clients had made full disclosure and that the petitioner before the National Land Commission is Kasarini Ancestral Families Self Help Group who took the position that the orders made by L. Gacheru J did not directly affect them. Further, Mr Njagi submitted that Judicial Review No. 582/2016 is not directly connected to this matter and that the interested party is not the same. He went further to submit that in their full disclosure concerning Judicial Review 582/2016 the applicants also disclosed having filed Judicial Review 153/2016 and withdrawn it since no hearing dates were available. He contended that the National Land Commission has no jurisdiction to hear parties over matters which have been decided by courts of competent jurisdiction.

This court, upon hearing both parties' advocates on the issue of stay of proceedings pending before the National Land Commission directed that the Environment and Land Court Judicial Review No. 582/2016 be availed for perusal and that file was expeditiously availed to me.

I have carefully perused Judicial Review ELC 582/2016 which was filed on 2<sup>nd</sup> June 2016 under certificate of urgency. In that matter, on 2<sup>nd</sup> June 2016 Honourable L. Gacheru J Duty Judge of Environment and Land Court did certify the matter as urgent and fixed it for inter partes hearing on 7<sup>th</sup> June 2016. On 7<sup>th</sup> June 2016, she granted leave to apply in terms of prayer No. 2 but regarding prayer for stay, she noted that there were interim orders in file No. ELC 557/2009 which were in operation hence no need for new orders. She directed that service of the application be effected upon the respondents/Interested party for inter partes hearing on 23<sup>rd</sup> June 2016.

On 23<sup>rd</sup> June 2016, Mr Njagi counsel for the applicant and Mr Mbuthia for the respondent appeared. Mr Mbuthia sought for time to respond to the application and the court granted leave of 21 days to the respondent to file a replying affidavit, while the applicant was granted leave if need be, to file a supplementary affidavit within 14 days and the Notice of Motion was slated for hearing on 7<sup>th</sup> November 2016 by consent.

The question is, is there any similarity between ELC JR 582/2016 and this matter and if so, is there an abuse of the court process?

Starting with ELC JR 582 of 2016, the Exparte applicants are:

Samuel Githegi Mbugua

Grace Muthoni Githegi

Margaret Nyokabi Mbugua

Christine Mithiri Mbugua

Ruth Wanjiku, Esther Njeri & Paul Ndungu as executors of the estate of Mary Warurii Gakunju.

The respondent in the said case is the National Land Commission.

In the said motion, ELC 557/2009 (Machetha Kariuki & Others Vs Samuel Githegi Mbugua & Others) is cited as one of the matters in issue and which matter is pending.

Examining prayer No. 2 of the Chamber Summons dated 25<sup>th</sup> July 2016 subject of this ruling and comparing it with the prayer No. 2 of the Chamber Summons dated 2<sup>nd</sup> June 2016 in ELC JR 582/2016, the persons who are sought to be prohibited from hearing the petition are the National Land Commission. The named complainants,/petitioners / in both cases are a group calling itself Kasarini Ancestral Families Self Help Group, who in ELC JR 582/2016 are said to be plaintiffs in ELC case No. 557/2009. The title numbers are the same. In that matter ELC JR 582/2016, the applicants herein sought for stay of proceedings pending before the National Land Commission in so far as those proceedings were related to ELC 557/2009.

From the above, I am persuaded that this application involves the same parties and is a parimateria with the applications filed in ELC JR 582/2016 wherein the court clearly stated that the orders made in ELC 557/2009 were still in force and applicable hence there was no need to make fresh orders.

I also note that in ELC JR 582/2016, the pleadings did not specifically name the officials of Kasarini Ancestral Family Self help Group, which officials are named herein. Nonetheless, this court finds that the option available to the applicants herein was to revert back to ELC 557/2009 or ELC JR 582/2016 to obtain a specific order for stay of proceedings pending before National Land Commission between the same parties hereto and not to file a separate Judicial Review matter in the High Court seeking for stay. To duplicate proceedings in my humble view, is to seek to confuse the cause of justice and to conflict the courts which are likely to issue contradictory orders and in the end, this could embarrass the judicial officer making such orders. The application for stay is therefore found to be wanting in merit and I decline to grant any stay orders as prayed. The prayer thereof is dismissed.

Orders accordingly.

**R.E. ABURILI**

**JUDGE**

**28/7/2016**