



**REPUBLIC OF KENYA**

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

**JR. MISC. NO. 1/2015**

**ALICE SISINA.....APPLICANT**

**-VERSUS-**

**THE LAND REGISTRAR KAJIADO.....1<sup>ST</sup> RESPONDENT**

**THE DISTRICT SURVEYOR KAJIADO.....2<sup>ND</sup> RESPONDENT**

***(Being a judicial review from original exparte orders granted in the Principal Magistrate's Court at Kajiado in Misc. No. 47 of 2015 delivered on 13/10/2015 by Hon. E.A. Mbicha RM)***

**RULING**

1. By a letter dated 14/10/2015, the Principal Land Registrar Kajiado wrote to this court regarding proceedings before Principal Magistrate's Court on 13/10/2015. According to his letter of complaint, a court order was served upon him to implement arising from **Miscellaneous Civil Application No. 47 of 2015**.

2. Pursuant to the letter, this court called for the lower court record to satisfy itself of the correctness, legality and regularity of the decision by the trial court.

3. The brief facts on perusal of the record were that Applicant ALICE SISINA through MR. ITAYA Advocate filed and exparte notice of motion against the Land Registrar Kajiado and the District Surveyor Kajiado seeking the following orders:

- a. ***That the District Surveyor Kajiado be and is hereby empowered to issue a new number to parcel left between KAJIADO/KITENGELA/4058 and KAJIADO/KITENGELA/1992.***
- b. ***That the Land Registrar Kajiado be and is hereby ordered to issue a new title to a parcel of land left between KAJIADO/KITENGELA/4058 and KAJIADO/KITENGELA/1992.***

On 13/10/2015 the learned trial magistrate heard the notice of motion exparte and issued final orders as prayed against the respondents to implement the order issued and served for compliance and the ones giving rise to the issue before this court under its supervisory jurisdiction.

4. The supervisory powers of the High Court are enshrined in **Article 165 (6) and (7) of the Constitution of Kenya**. Article 165 (6) and (7) of the Constitution provides;

***“(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body, or authority exercising a judicial or quasi - judicial function, but not over a***

*superior court.*

***(7) For the purpose of Clauses (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in Clauses (6) and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”***

The supervisory jurisdiction under **Article 165 (6) and (7)** of the Constitution empowers the High Court to move *suo moto* where it is necessary to ensure fair administration of justice or as to prevent abuse of the court process.

In exercise of supervisory jurisdiction under **Article 165 (6), (7) of the Constitution and Section 3A of the Civil Procedure Act** I have examined and evaluated the lower court record.

5. It is clear from the record that applicant instituted proceedings before lower court without complying with **Order 3 (1) (2) and Order 4 (1) (a) (b) of the Civil Procedure Act and Rules of 2010.**

6. **Order 3 (1) of the Civil Procedure Rules** provides on how a suit should be instituted by a party.

***“Every suit shall be instituted by presenting a plaint to the court or such other manner as may be prescribed.”***

**Order 3 Rule (2)** provides for a mandatory checklist of documents to accompany suits including suits against the government.

The checklist should consist of the following:

- a. ***The affidavit referred under Order 4 Rule (1) (2).***
- b. ***A list of witnesses to be called at the trial.***
- c. ***Written statements signed by the witnesses excluding expert witnesses and***
- d. ***Copies of documents to be relied upon at the trial including a demand letter before action.***

7. As a matter of concern and interest to this court the applicant filed no suit nor pleadings as provided for under **Order 3 (1) (2), Order 4 (1), (a) (b) and Order 2 Rule (1) of the Civil Procedure Act and Rules.”**

8. The applicant moved the court through a notice of motion *ex parte* and final orders granted without having the suit properly filed and determined on merits.

9. It was wrong for the respondents not to be served and be heard before adverse orders issued against them to comply. There is no evidence from the record that the respondents were aware that a dispute involving L.R.

**KAJIADO/KITENGELA/4058 and KAJIADO/KITENGELA/1992** had been filed and orders issued. There was no suit before the lower court at Kajiado to warrant an *ex parte* interlocutory application dated 7/10/2015.

10. The orders issued by the trial court were in clear contravention of the statutory and legal requirements on framing, registration and filing of civil suits in our courts. The criteria and standard is provided for in the

**Civil Procedure Act and Rules.**

11. I am of the considered view that this is a proper case in which the High Court is under duty in its oversight role to correct the error, mistake or legality of the proceedings and subsequent orders. The purpose is to ensure the ends of justice are met and

to prevent abuse of the process of the court by the litigant.

12. I am satisfied that the letter by the Principal Land Registrar, Kajiado raises questions of the correctness, legality and regularity of the proceedings and a decision by the learned trial magistrate on the notice of motion dated 7/10/2015.

13. In exercising inherent supervisory powers under **Article 165 (6) and (7) of the Constitution**. The proceedings and orders granted cannot be allowed to stand the test of legality and propriety. There is therefore constitutional and statutory necessity to set aside the orders against the respondent.

14. The applicant is at liberty to file a proper suit in a competent court to secure her rights under the law.

*Dated and signed at Kajiado 21<sup>st</sup> October, 2015.*

**R. NYAKUNDI**

**JUDGE**

I order the same be typed and served upon the applicant's counsel.

The respondents and trial magistrate Hon. Mbicha.

Orders accordingly.