



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

JUDICIAL REVIEW MISC. CIVIL APPLICATION NO. 3 OF 2020

IN THE MATTER OF: AN APPLICATION BY PAUL SANE NANAPU FOR LEAVE TO **APPLY FOR JUDICIAL REVIEW BY WAY OF MANDAMUS**

AND

IN THE MATTER OF: SECTION 7 OF THE KENYA ROADS ACT, NO. 2 OF 2007 **LAWS OF KENYA**

AND

IN THE MATTER OF: EXECUTION OF DECREE OF COURT ISSUED IN KAJIADO

SENIOR RESIDENT MAGISTRATE’S COURT LAND DISPUTE **TRIBUNAL CASE NO. 30 OF 2011**

BETWEEN

PAUL SANE NANAPU.....APPLICANT

-VERSUS-

THE DIRECTOR GENERAL KENYA RURAL ROADS AUTHORITY.....RESPONDENT

-AND-

JOHN UMAKA MUTUNKEI.....INTERESTED PARTY

(Legal representative of the Estate of Christopher Mutunkei)

RULING

This ruling is on the Chamber Summons dated 4th March, 2020. It is brought under **Order 53 Rules (1), (2) and (4)** of the **Civil Procedure Rules, Article 10** of the **Constitution of Kenya, Section 7(1) of the Kenya Roads Act (Act No. 2 of 2007)** and all enabling powers and provisions of law.

The said summons has two main prayers left namely;

b. Leave be granted to the Applicant for an order of Mandamus to direct and compel the Director General Kenya Rural Roads Authority to perform its functions under **Section 7(2)** of the **Act** by constructing and or grading a 12 metre road on parcels formerly L.R. KAJIADO/KITENGELA/53 and 54 as more particularly decreed by the Court in the Judgment and Decree dated 5/6/2012 issued in Kajiado Senior Resident Magistrate’s Court Land Disputes Tribunal Case No. 30 of 2011, Christopher Mutunkei –vs- Paul Sane Nanapa within 21 days of this Judgement and order.

c. An order for the costs.

The grounds for seeking the orders can be summarized and paraphrased as follows;

- a. There has been a boundary dispute between the family of the Applicant and that of the Interested Party concerning the two parcels.
- b. The Land Disputes Tribunal determined the dispute.
- c. The Magistrates Court at Kajiado confirmed the Tribunal's award and issued a Decree that remains unsatisfied to date.
- d. That a 12 metre road was created to separate the two parcels.
- e. That it is the duty of the Respondent to construct, upgrade, rehabilitate and maintain this road among others.
- f. That if the Respondent is not compelled to perform the above duty, the dispute between the Applicant and the Interested Parties will escalate to alarming levels.

In addition to the above grounds, the summons is supported by a Verifying Affidavit sworn by the applicant and dated 4/3/2020. There are also several annexures which include the proceedings before the Land Disputes Tribunal and the Decree issued by the Magistrate's Court.

Finally, the Applicant swore a Supplementary Affidavit dated 22/4/2021 and filed on 31/5/2021.

The summons is opposed by the Respondent which has sworn two Replying Affidavits through its Director General, Engineer Philemon Kandie. The affidavits are dated 17/2/2021 and 17th May, 2021.

In summary, the Respondent is saying that the road between the two suit parcels is not a classified road in any of classes S, A, B and C and as such the Respondent is under no obligation to construct, upgrade rehabilitate or maintain it.

Annexed to the Affidavits is Legal Notice No. 2 of 22nd January, 2016 showing all classified roads in Kenya which excludes the area between the suit parcels.

The interested party John Umaka Mutunkei has also opposed the Summons and filed two Affidavits dated 25/11/2020 and 11/6/2021 respectively. In summary he says that the Land Disputes Tribunal exceeded its mandate and its decision should not be implemented. He called for the dismissal of the Summons dated 4th March, 2020.

Written Submissions were filed by the Applicant, the Interested Party and the Respondents on 3rd June, 11th June and 12th August 2021 respectively.

I have carefully considered the Summons in its entirety including the affidavits, annexures, grounds, submissions and the jurisprudence contained therein.

I find that the Summons has no merit for the following reasons;

Firstly, enforcement of a Decree of a Lower Court should be by the Lower Court itself. A decree of the Lower Court cannot be enforced by a higher Court. Yet all the Applicant is seeking in the summons is the enforcement of the Judgment and Decree of the Lower Court issued on 5/6/2012.

Secondly, I am convinced by the reply by the Respondent that the road separating land parcels KAJIADO/KITENGELA/53 and 54 is not a classified road and that it does not fall within the mandate of the Respondent.

The Director General of the Respondent is the authority on classified roads. He has annexed sufficient evidence in form of the relevant legal notice to prove that the said road is not within his purview.

Thirdly, even if the road in question was classified, it is not for the Court to direct the Respondent on how to carry out its work. Building of roads involves heavy expenditure of Public Funds. All Public Expenditure involves budgeting, prioritizing of projects and allocation of funds.

The Court is not involved in any of the above mentioned and other activities of the Respondent. It would be wrong for the Court to issue orders that cannot be implemented.

For the above reasons, I find that the Applicant has not made out a good case for the grant of leave to commence Judicial Review Proceedings for an order of Mandamus or for any other prerogative writ.

The Summons dated 4th March, 2020 is dismissed with costs to the Respondent and the Interested Party.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 23RD DAY OF MARCH, 2022

M.N. GICHERU

JUDGE