



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
JUDICIAL REVIEW NO.32 OF 2012
IN THE MATTER OF APPLICATION FOR AN ORDER
OF MANDAMUS

JOSEPH KORIR CHEPKWONY APPLICANT

VERSUS

LAIKIPIA DISTRICT LAND REGISTRAR RESPONDENT

RULING

By an application dated 28/05/2013, made pursuant to the provisions of **Order 53 Rule 3 (1) (2)** and **Section (3) 4(1)** of the **Law Reform Act**, the applicant prays that this court do issue an order of mandamus, compelling or commanding the Laikipia District Registrar to issue title deed to the applicant in respect of land parcel Laikipia Nyahururu Settlement Plot No.111 forthwith.

In the grounds on the face of the application, along with the verifying affidavit and statement of facts, the applicant claims to be the bona fide owner of the said parcel, having inherited it from his late father, one JOHN KIPKORIR BURIACH.

Incidentally his father was the original allottee, but he passed away on 04/03/1993, and the applicant obtained grant of letters of administration. Subsequently, the Settlement Fund Trustee issued the applicant with a discharge of charge, after the latter presented the grant, certificate of confirmation and payment receipts in respect of the loan. The Settlement Fund Trustee refused to process the title documents for no valid cause and the Laikipia District Land Registrar has also failed to issue the applicant with a title document in his name. This failure is described as a contravention of duties, which the District Land Registrar is expected to perform as a Public Servant.

The applicant late father was issued with a consent by the Laikipia District Land Control Board transferring the land to him on 25/1/1994. The consent was given to CHEPKWONY C. MITEI and CHARLES C. CHEBII, to transfer the parcel referred to herein, to KIPKORIR A. BURIACH. The deceased as per the certificate of grant, was JOHN KIPKORIR BURIACH, and indeed **JKC 3**, the discharge document clearly shows that the applicant had paid the entire Settlement Fund Trustee loan.

On 9th June 2013, the applicant in his capacity as the legal administrator of his late father's estate, presented to the Laikipia District Land Registrar transfer documents by way of transmission for registration to facilitate the transfer. However the District Land Registrar refused to effect the transfer and the applicant lodged a complaint with the Kenya Anti-Corruption Commission who advised him to seek

redress from the court.

On advice from his advocates, the applicant presented another set of transfer documents, by way of transmission, and made all the requisite payments as shown by the annexed receipts and bank slip. He was then informed to collect his title document within a week. However upon his return to collect the Title document, the Laikipia District Land Registrar became rude and castigated him for filing this case, saying she would only act if the court issued orders.

There was no response filed by the respondent. I am not sure whether the further verifying affidavit has mixed up the description of the respondent, as it refers to the District Land Registrar Nanyuki instead of Laikipia. I think it is an error on the face of the record, given that the land is in Laikipia District. I believe the respondent is as described in the pleadings on the Laikipia District Land Registrar, who has elected not to respond to the application or offer any explanation as to why despite the application and presentation of documents and payments made, no title has been issued.

Under section 8 of the Registered Land Act, among the duties the Land Registrar performs is:-

- a. **He may require any person to produce any instrument, certificate or other document or plan relating to the land, lease or charge in question, and that person shall produce the same;**
- b. **He may summon any person to appear and give any information or explanation respecting land, a lease or a charge, or an instrument certificate or other document or plan relating to the land, lease or charge in question, and that person shall appear and give the information or explanation;**
- c. **He may refuse to proceed with any registration if any instrument, certificate or other document, plan, information or explanation required to be produced or given is withheld or any act required to be performed under this Act is not performed.**
- d.
- e.

Section 32 of the Act provides that:-

“32(1) The Registrar shall. If requested by a proprietor of land or a lease where no title deed or certificate of lease has been issued, issue to him a title deed or a certificate of lease, as the case may be, in the prescribed form showing, if so required by the proprietor, all subsisting entries in the register affecting that land or lease:

This is a duty which the respondent ought to perform, to enable the applicant realise his right to administer the property. Consequently my finding is that the application has merit and is allowed. The Laikipia District Land Officer is ordered to issue the applicant with a Title document in respect of land parcel **No.Laikipia/Nyahururu/111.**

Delivered and dated this 16th day May, 2014 at Nakuru.

H.A. OMONDI

JUDGE