



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**JUDICIAL REVIEW NO. 2 OF 2021**

REPUBLIC.....APPLICANT

=VERSUS=

THE DISTRICT LAND REGISTRAR, KIAMBU.....1ST RESPONDENT

THE DISTRICT SURVEYOR, KIAMBU COUNTY.....2ND RESPONDENT

SANJAY SURESH CHANDRA SOMAIA.....EXPARTE APPLICANT

**JUDGMENT**

1. Through a notice of motion dated 29/3/2021, the ex-parte applicant seeks the following verbatim judicial review orders:

*i. An order of mandamus compelling the Land Registrar - Kiambu to issue the applicant with an official search certificate and certified copy of the green card in respect to parcel of land known as Escarpment/Kinale Block 1/2764 pending the hearing and determination of the application.*

*ii. An order of mandamus to compel the 1st and 2nd respondents to visit, ascertain and fix the boundaries of Escarpment/Kinale Block 1/2764 and to further indicate if there has been encroachment on the suit parcel and if so, to what extent and by the owner or occupant of which parcel of land.*

*iii. An order that the police at Lari Police Station or such police station/post which is nearby to ensure peace prevails and the compliance and enforcement of the order as may issue from this honourable court.*

*iv. That any other, further or alternative orders be made as the court may deem just and expedient.*

*v. Costs of the proceedings.*

2. The case of the ex-parte applicant is that he is the registered proprietor of Land Parcel Number **Escarpment/Kinale Block 1/2764**, measuring 1.62 hectares, located in Kinale Location, Lari Sub-County, Kiambu County [**the suit property**]. He purchased the suit property from one **Yusuf Kimutai** in 1999. The parcel is a subdivision surveyed out of **Escarpment/Kinale Block 1/2463**. The beacons relating to the suit property have been destroyed. His pleas to the 1st respondent to reinstate the beacons have gone unheeded. He is apprehensive of losing part of the suit property due to the 1st respondent's failure to reinstate the missing beacons.

3. The applicant adds that his efforts to obtain an official search on the suit property have been unsuccessful because the 1st respondent has failed to issue to him the official search. It fears that a restriction may have been registered against the parcel register without his knowledge.

4. The 1st respondent opposed the application through a replying affidavit sworn on 12/11/2021 by **Ann W Mararia**, a Land Registrar based at Kiambu Lands Registry. She deposed that in or about 1987/1988, the then President of the Republic of Kenya authorized allocation of part of Kinale Forest land to genuine squatters of Kinale Forest Escarpment. Pursuant to the presidential directive, a total of 1427 plots were allocated, including a few public plots. A few years later, widespread complaints were received to the effect that people who were not squatters in the Scheme had acquired irregular titles in the Scheme and were evicting genuine allottees. In 2002, a Ministerial Task Force was formed to investigate the complaints. The Task Force Report revealed that: (i) the titles ceremoniously issued by the president had 1427 parcels but the figure had risen to 3500; and (ii) public utility land and marshy land which had been reserved had been subdivided and subsequently allocated.

5. Ms Mararia added that consequently, an embargo was placed on registration for the Kinale Scheme and Green Cards were taken to Ardhi House. Upon conclusion of investigations, green cards without any irregularities were returned. She exhibited excerpts of the Report of the Ministerial Task Force and a copy of a temporary green card reconstructed in relation to the suit property.

6. She added that the suit property was a subdivision out of **Escarpment/Kinale Block 1/2463** and Escarpment/Kinale Block 1/2463 was a subdivision out of **Escarpment /Kinale Block 1/1458** which measures 28 hectares and which appears in **Matrix TC 4** of the **Task Force Report** as forming part of Government plots that were irregularly subdivided.

7. She further deposed that the original green card for the suit property was not in the custody of the Land Registrar, adding that the Land Registrar only had a temporary card prepared on 8/2/2018. She stated that it was because of the above reasons that the Land Registrar was unable to issue an official search. She urged the court to reject the application.

8. The motion was canvassed through written submissions dated 16/7/2021. Ms Nyokara who appeared for the Attorney General in the matter indicated the Attorney General had filed the above affidavit but did not intend to file written submissions on the motion.

9. I have considered the motion, the response to the motion, and the ex-parte applicant's written submissions. I have also looked at the relevant legal framework and jurisprudence. Taking into account the statement of facts and the 1st respondent's response to the motion, the only question that fall for determination is whether, in the circumstances of this motion, the judicial review orders sought in the motion should be issued.

10. What has emerged from the replying affidavit of the 1st respondent is that the Land Registrar does not have the original parcel register relating to the suit property. She has explained that the suit property is a second generation sub-division out of parcel number Escarpment/Kinale Block 1/1458 which was a Government plot that was irregularly subdivided. On the other hand, the ex-parte applicant holds a title which he contends was duly registered and issued to him. In the circumstances, it is the view of the court that judicial review proceedings are not an effectual platform on which to adjudicate the dispute in this suit. The dispute in this suit will effectively be adjudicated on the platform of a normal civil suit commenced by way of a plaint in which the ex-parte applicant will seek appropriate reliefs. The ex-parte applicant will be expected to join all the relevant parties to the civil suit.

11. For the above reason, I decline to grant the judicial review orders. The ex-parte applicant will be at liberty to initiate appropriate civil proceedings to ventilate his grievances and seek appropriate reliefs. There will be no order as to costs of the suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 10<sup>TH</sup> DAY OF MARCH 2022**

**B M EBOSO**

**JUDGE**

Court Assistant: Lucy Muthoni