



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

MISC. CIVIL APP. NO. 67 OF 2006

REPUBLIC APPLICANT

VERSUS

1. MINISTER OF ENVIRONMENT & NATURAL RESOURCES

2. D.F.O – TRANS NZOIA)

3. THE ATTORNEY GENERAL..... RESPONDENTS

4. EX-PARTE CHORLIM MULTI-PURPOSE

CO-OPERATIVE SOCIETY LTD)

R U L I N G

1. The Ex-parte applicant Chorlim Multipurpose Co-operative Society filed a notice of motion dated 5/6/2006 in which it seeks an order of certiorari to remove into this court the decision of the District Forest Officer, Trans – Nzoia embodied in a letter of 4/5/2006 in so far as it requires the applicants members to vacate the land comprised in LR.NO 6992/2 situated in Saboti Division of Trans-Nzoia District.
2. The ex-parte applicant contends that the decision was arbitrary and contrary to the rules of natural Justice. The ex-parte applicant also contends that LR NO 6992/2 was allocated to it in 1999 and that it has since settled its 200 members on it and that the said land does not form part of the forest land. The applicant further contends that the said land has never been declared as forest land and gazetted as such. That the applicant has paid part of the consideration amounting to Kshs.1,200,000/= to the Commissioner of lands.
3. The applicant contends that the land in issue was allocated to it on 9/2/1999 and that it was duly given an allotment letter which allotment letter has never been revoked.
4. The applicant's motion was opposed by the interested party the District Forest Officer Trans-Nzoia through a replying affidavit filed in court on 3/7/2009. The interested party contends that LR NO 6992/2 is forest land which is under the control and management of Kenya Forest Service as stipulated under the Forest Act. That if any authority purported to allocate the said land, the allocation is null and void for failure to follow the procedure laid down by the Forest Act.
5. The interested party contends that the said property that is LR 6992/2 was allocated to Chorlim Marketing Co-operative Society but that the present application has been brought by Chorlim Multipurpose Co-operative Society Limited. The interested party therefore contends that the

- former cannot purport to bring this application on behalf of the latter.
6. The interested party contends that LR NO 6992/2 which measures 252.53 hectares was bought from Mr K. L. Sorensen at Kshs.320,000 by the Ministry of Environment and Natural Resources. The Director of Survey prepared a boundary plan No. 75/389 which was registered by the Director of Survey in 2000.
 7. On 3/5/2006 the District Environment Committee met and resolved that all squatters in Government Forest be evicted so that the forests could be conserved. It is on this basis that notices were issued on 4/5/2006 giving the squatters time to move out of the Government Forest. The interested party contends that there were no objections to the said quit notice but the applicant decided to move to court for protection.
 8. The interested party contends that due to the insecurity in the area, the Army was deployed to contain the security problem. At the conclusion of the security operation, the Army returned the forest to the management of Kenya Forest Service. The interested party therefore contends that the notice to quit has already been spent.
 9. I have considered the applicants application as well as the opposition thereto by the interested party. The issue which arises for determination is whether the ex-parte applicant has made out a case to warrant this court to bring into this court the decision of the District Forest Officer contained in the letter dated 4/5/2006 for purposes of quashing it. The power of the Court to issue an order of certiorari is conferred by sections 8 and 9 of the Law Reform Act Cap 26 Laws of Kenya. The procedure for moving the court is stipulated under order 53 of the Civil Procedure Rules.
 10. In a Judicial Review matter, the court is only concerned as to whether the decision complained of was arrived at in a fair manner and in accordance with principles of natural Justice. The court is not concerned about the merits of the decision. In the present case the ex-parte applicant is seeking to quash the decision of the District Forest officer contained in a letter dated 4/5/2006. The contents of that letter are as follows;-

RE: SABOTI FOREST LAND – QUIT NOTICE

Please note that, the Government has finally decided that all illegal squatters occupying and cultivating the Government gazetted forests be evicted with immediate effect. You are hereby advised then to vacate the said forest together with all your properties.

You have been given upto 25th May, 2006 to have cleared from the forest lands and failure to comply with this notice, will leave us with no option but to arrest anybody found within the forest areas. Any property found therein by them will be confiscated and disposed off in any manner the chief conservator of forests may deem fit.

Please comply with this notice.

Simon K. Wahome

District Forest Officer

Trans-Nzoia”

11. A look at the letter complained of shows that it was only communicating a decision by the Government to evict all squatters from Government Forests. A replying affidavit by the District Forest Officer annexed minutes of the District Environment Committee held on 3/5/2006. This is the committee which decided that all the squatters on Government forest be evicted. The committee resolved that the affected squatters be given adequate notice. The District

Environment Committee considered the fact that the squatters were depleting the forests and that this was going to interfere with the environment in a negative way. The applicant did not seek to quash the decision of the District Environment Committee made on 3/5/2006. They instead moved to court seeking to quash a letter which communicated the decision. This letter which is complained of is actually a notice to quit Saboti forest land. The notice does not mention the applicant. It is therefore not clear on why the applicant moved to court seeking to quash the notice.

12. Even if it were to be assumed that the applicant was affected by the quit notice, the applicant's basis for moving to court is that they were allocated LR No. 6992/2 by the Commissioner of Lands on 9/2/1999. The applicant has annexed to its application a certificate of title for LR NO 6992/2 and a letter of allotment dated 9/2/1999. The certificate of title shows that the land in issue is registered in the name of K. L. Sorensen. If this is the case, then the allotment which the applicant has cannot stand. This is because the Government could not allocate land which was not available for alienation. There is no evidence that the land was surrendered back to the Government by Mr K. L. Sorensen so as to be available for re-allocation to other parties. The interested party contends that the land was bought by the Ministry of Environment and Natural Resources in 1976. The Ministry paid Mr K. L. Sorensen 320,000/=. Transfer was not possible because the land had been charged and the charge had not been discharged. It does not therefore make any sense that the Commissioner of Lands could allocate such land to the applicant.

13. It is not disputed that the said land was surveyed and the plan duly registered by the Director of Survey. What was only remaining is Gazettment of the said land as forest land. It is apparent that the purported allotment by the Commissioner did not confer any lawful interest in the applicant. A look at the records in this file shows that there were other entities which had invaded gazetted forest land. The notice complained of may have targeted them as well. There is no evidence in form of affidavits put forth in this application to show that the notice affected the applicant. In any case even if it were directed to the applicant, the applicant has not demonstrated that it had recognisable interest in the land. The applicant did not seek to quash the decision of the District Environment Committee. It instead sought to quash a letter by the District Forest Officer communicating the decision. There was no decision in that letter capable of being quashed. The decision which should have been sought to be quashed was the decision of the District Environment committee made on 3/6/2006. For the reasons given hereinabove, I find that the applicants motion dated 5/6/2006 cannot stand. The same is hereby dismissed with costs to the interested party.

It is so ordered.

Dated, signed and delivered at Kitale on this 30th day of September, 2014.

E. OBAGA

JUDGE

COURT: Ruling delivered at 9.24 a.m. in the absence of Advocates for the parties who were aware of today's date. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

30/9/2014