



Kipatala v The Deputy County Commissioner, Baringo North & 6 others; Board Of Management, Barwessa Secondary School. (Interested Party) (Environment & Land Miscellaneous Case 19 of 2021) [2022] KEELC 3524 (KLR) (28 April 2022) (Ruling)

Neutral citation: [2022] KEELC 3524 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ENVIRONMENT & LAND MISCELLANEOUS CASE 19 OF 2021

EO OBAGA, J

APRIL 28, 2022

IN THE MATTER OF AN APPLICATION OF THOMAS C.KIPTALA FOR

JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF THE LAND ADJUDICATION ACT (CAP 284) LAWS

OF KENYA

AND

IN THE MATTER OF PLOT NO. 220 BARWESSA “A” ADJUDICATION

SECTION (BARINGO NORTH SUB-COUNTY

BETWEEN

THOMAS C. KIPATALA APPLICANT

AND

THE DEPUTY COUNTY COMMISSIONER, BARINGO NORTH 1ST

RESPONDENT

THE CABINET SECRETARY FOR LANDS, HOUSING & URBAN

DEVELOPMENT. 2ND RESPONDENT

THE DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT 3RD

RESPONDENT

THE LAND REGISTRAR, BARINGO LANDS REGISTRY 4TH RESPONDENT

THE COUNTY LAND ADJUDICATION & SETTLEMENT OFFICER,

BARINGO. 5TH RESPONDENT

THE CHIEF LAND REGISTRAR 6TH RESPONDENT



AND

BOARD OF MANAGEMENT, BARWESSA SECONDARY
SCHOOL. INTERESTED PARTY

RULING

1. This is a ruling in respect of a chamber summons dated May 17, 2021. The ex-applicant filed this Chambers summons in which he sought leave to commence judicial review proceedings for orders of certiorari and prohibition. When the application was placed before the Judge, leave was granted to the *ex-parte* applicant to commence proceedings for judicial review. The court however directed the *ex-parte* applicant to serve the Chamber Summons for inter-parties hearing on prayers for stay and injunction as well as costs.
2. The *ex-parte* applicant contends that if stay is not granted, it will render the intended judicial review nugatory. The *ex-parte* applicant argues that the process of issuance of title in favour of the interested party is in progress and that if the decision of the Minister is not stayed, the title will be issued and this will render the judicial review proceedings nugatory.
3. The *ex-parte* applicant's application was opposed by the Respondents and interested party through a replying affidavit sworn on September 16, 2021. The respondents and interested party contend that the *ex-parte* applicant's application is incompetent and it only consists of falsehoods which are calculated to attract sympathy of the court.
4. The parties were directed to canvass the application by way of written submissions. The *ex-parte* applicant filed his submissions dated July 28, 2021. The respondents and interested party filed their submissions dated November 11, 2021.
5. I have considered the *ex-parte* applicant's application as well as the opposition to the same by the respondents and the interested party. I have also considered the submissions by the parties. From the *ex-parte* applicant's submissions, it is clear that the *ex-parte* applicant abandoned the prayer for injunction and for a good cause as one cannot seek injunctive orders in judicial review proceedings. See *Cortec Mining Kenya limited v Cabinet Secretary Ministry of Mining & 8 others* 2015 eKLR.
6. The only issue for determination is whether stay of the Minister's decision ought to be granted. The law is clear that stay in judicial review proceedings is granted at the discretion of the court. Where the act sought to be stayed has been implemented, stay cannot be granted. In the instant case, the interested party in 2013 brought in surveyors to align boundary of the school and that of the *ex-parte* applicant. This was done. Proceedings regarding the boundary thereafter culminated in the appeal to the minister by the *ex-parte* applicant. The appeal was dismissed. As at the time of dismissal of the appeal to the minister, the interested party was already in possession of the disputed portion. There is therefore nothing to stay. There is no evidence that title in favour of the interested party is being processed. If the *ex-parte* applicant succeeds in his judicial review proceedings, the school will simply move out of the disputed portion which the *ex-parte* applicant confirms in submissions that it is only being used by interested party which grazes its animals on the portion.



7. In *R(H) v Ashworth Special Hospital Authority* (2003) IWL R 127, Dyson L. J held as follows:

“I now turn to the third situation, which occurs where the decision has not only been made, but is has been carried out in full. At first sight, it seems nonsensical to speak of making an order that such a decision should be suspended. How can one say of a decision that has been fully implemented that it should cease to have effect? Once the decision has been implemented, it is a past event and it is impossible to suspend a piece of history.”

8. From the above analysis, it is clear that the *ex-parte* applicant’s application is devoid of merit. The same is hereby dismissed with costs to the respondents and interested party. The *ex-parte* applicant is directed to file the substantive motion for Judicial Review within 21 days from the date hereof. As this matter emanated from Baringo, this file is transferred to Iten ELC Court for hearing and disposal of the main motion.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 28TH DAY OF APRIL, 2022

E. OBAGA

JUDGE

In the virtual presence of;

Ms. Ruto for Mr. Odongo for Respondent

Ms. Cheruiyot for Mr. Mwaita for Ex-parte Applicant

Court Assistant –Albert

E. OBAGA

JUDGE

28TH APRIL, 2022

