



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JR MISC. NO. 1417 OF 2001

REPUBLICAPPLICANT

V

MINISTER FOR LOCAL GOVERNMENT.....RESPONDENT

PRESBYTERIAN FOUNDATION.....INTERESTED PARTY

EX-PARTE

RICHARD KANGETHE KARANJA

(ON BEHALF OF NGEWA COMMUNITY

CENTRE)

JUDGEMENT

The application that presents itself for the consideration of this court is the notice of motion dated 4th December, 2001 in which the ex-parte applicant namely Richard Kangethe Karanja on behalf of Ngewa Community Centre seeks orders as follows:-

1. THAT this Honourable Court be pleased to issue an order of certiorari, to remove to the High Court for quashing the decision of the Minister for Local Government contained in his letter dated 26th October 2001.

2. THAT the Honourable Court be pleased to make an order of prohibition, prohibiting the Minister for Local Government from proceeding any further with the transaction involving L.R. Githunguri/Nyaga/529 and/or from giving effect to his decisions contained in his letter dated 26th October 2001.

3. THAT an order of Mandamus do issue to the Honourable Minister for Local Government, to approve the subdivision and allocation of parcel No. L.R. Githunguri/Nyaga/529 pursuant to the resolution of Kiambu County Council made on 6th February 2001.

4. A declaration that Parcel of Land L.R. Githunguri/Nyaga/529 had been re-planned, subdivided and allocated lawfully in terms of the resolutions made by Kiambu County Council on 6th February 2001.

5. THAT costs of this application be provided for.

The application is supported by the chamber summons application for leave dated 29th November, 2001, a statutory statement and a verifying affidavit sworn by Richard Kangethe Karanja.

The gist of the case as can be discerned from the papers filed in court by the parties is that the dispute revolves around the ownership of a parcel of land known as L.R. No. Githunguri/Nyaga/529 measuring about 4 acres. The said parcel of land was initially registered in the name of the Native Land Trust Board on 23rd February, 1959. After independence the land became the property of Kiambu County Council. There are assorted developments on the parcel of land.

The said developments were carried out with assistance from YMCA. There is, however, a dispute as to whom between the applicant and the Presbyterian Foundation (the interested party) carried out the developments and who among the two parties occupy the land.

It is also agreed that sometimes in the 1990s the interested party applied to the County Council of Kiambu (the Council) for allocation of the parcel of land. The application was approved by the Town Planning Committee on 13th March, 1997 and the approval was confirmed by the full Council on 12th August, 1997. Through a letter dated 18th May, 1999 the Council requested the respondent (the Minister for Local Government) for approval of the said allocation as per the requirement of Section 144 of the Local Government Act Cap 265.

The said letter was however followed by another letter dated 26th July, 1999 in which the Council requested the Minister not to approve the said allocation since it had discovered that there were other community developments on the parcel of land which did not belong to PCEA Church. The Council indicated that it intended to reconsider the approval.

The Council thereafter re-planned the said plot and subdivided it into four plots namely numbers 1213, 1214, 1215 and 1216. Vide letter dated 20th March, 2000 the Council requested the Minister to approve the re-planning so that the four plots would be allocated to a church, a dispensary, a community hall and the Jua Kali sector.

There was continuing exchange of letters and on 26th October, 2001 one Miss M.W. Thairu writing on behalf of the Permanent Secretary of the Ministry of Local Government communicated to the Council as follows:-

“RE: THE PRESBYTERIAN FOUNDATION

VERSUS

**KIAMBU COUNTY COUNCIL AND NGEWA COMMUNITY TITLE NO.
GITHUNGURI/NYAGA/529**

We refer to your letter Ref. No. KCC/LG/5/13B Vol.V/96 dated 2/8/01 which conveyed the Council's resolution to subdivide land title No. Githunguri/Nyaga/529 into resultant title Nos. Githunguri/Nyaga/1213, 1214, 1215 and 1216.

Reference is also made to a letter dated 14/8/2001 being an appeal addressed to the Hon. Minister in respect of the above titles, the said letter was also copied to you.

The Hon. Minister has considered all the facts relating to this case and in particular your letter Ref. No.KCC/LG/5/13B/Vol.V/58 of 26/1/99 which is read together with your above quoted letter Ref. No.KCC/LG/5/13B/Vol.V/96 of 2/8/01

You are also aware that the Hon. Minister had already given his approval for transfer of plot No. Githunguri/Nyaga/529 to the PCEA Foundation. I have now been instructed to inform you as follows:-

“That the Minister's earlier approval on land title No. Githunguri/Nyaga/529 to the Presbyterian Foundation still stands. He has consequently declined to approve your Council's request for the preplanned and subdivided plots Nos:

Githunguri/Nyaga/1213 – Ngewa Health Centre

Githunguri/Nyaga/1214– Ngewa Church

Githunguri/Nyaga/1215 – Jua Kali

Githunguri/Nyaga/1216 – Community Centre

which request is contained in your letter dated 2/8/01.

By copy of this letter, the Commissioner of Lands, the Chief Land Registrar, Lands Officer Kiambu and the District Commissioner, Kiambu are requested to note and take action as appropriate.”

We trust that this decision will now bring the matter to a final conclusion in order for the Church to develop the plots and concentrate on matters of nation building.”

The above quoted letter is what brought the applicant to court. Through paragraph 32 of the statutory statement dated 29th November, 2001 the applicant attacks the decision of the Minister thus:-

“The decision of the minister contained in the letter dated 26th October 2001 should be quashed by this Honourable Court on the following grounds:-

(i) It alleges to have given consent to the Presbyterian Foundation of the suit land Githunguri/Nyaga/529 when there was no such earlier approval.

(ii) The Letter containing the ministerial decision appears to have been written in response to the letter by the Presbyterian Foundation dated 14/8/2001.

(iii) The said letter in itself was not an approval to the allocation of the suit land to Presbyterian Foundation.

(iv) The purported ministerial decision (if any) did not consider the factual situation on the ground.

(v) The purported ministerial decision (if any) was biased, unfair and made on impulse.

(vi) The said decision (if any) did not amount to an approval under Section 144 of the Local Government Act Cap 265.”

The respondent opposed the application through the replying affidavit of M.W. Thairu sworn on 19th March, 2002. Two paragraphs of the four-paragraph affidavit are pertinent to this application and they are reproduced as hereunder:-

“2. That the role of the Minister for Local Government in this matter was purely statutory, in that he is required by law under Section 144(5) of the Local Government Act, Cap 265 of the Laws of Kenya, to give his approval for allocation/transfer of land where the term exceeds seven (7) years.

3. That following representations by the parties herein, the Respondent herein decided to confirm its earlier approval of the suit premises to the interested party and duly communicated this decision on the 26th of October, 2001 to all the parties herein as well as the relevant Authorities.”

The interested party opposed the application through the replying affidavit of its Secretary Mr. Wilson W Kiboi. Through the said affidavit the interested party averred that the parcel of land in question was set aside/reserved for PCEA in 1959 by Kiambu County Council. The interested party averred that it proceeded to develop the land with the assistance of YMCA. The interested party went ahead and gave a chronology of the events that took place up to the time it was allocated the land by the Council. In short the interested party challenges the applicant’s claim to the parcel of land.

I have had the opportunity of carefully going through the file and in my view the main issue is whether the Minister acted unreasonably in consenting to the Council’s allocation of the parcel of land in question to the interested party.

It is agreed by all that there is High Court Civil Case No. 767 of 2002 which will address the issue of possession and ownership of the plot in question. That is as it should be since a judicial review court has limited evidence to aid it in determining such issues. It must also be remembered that this court is not concerned with the merits of the decision of the Minister but the issue is whether the Minister treated the applicant fairly in the course of reaching the decision.

I have read the submissions by the parties and I will bear the same in mind when reaching my decision. I will also have to be careful so that my comments in this judgement may not prejudice any of the parties in the pending civil suit.

The applicant’s case is premised on the Minister’s letter of 26th October, 2001. The letter is already produced in this judgement. The applicant seeks that the said letter be quashed since it alleges that the Minister had consented to the Council’s approval of the allocation of the parcel of land in question to the interested party. The applicant argues that there was no earlier approval and the said letter cannot be treated as an approval. It is the applicant’s argument that the Minister’s decision was influenced by the interested party’s letter of 14th August, 2001. Just for purposes of the record, the said letter was addressed to the Minister at that time Mr. J Kamotho and through the letter the interested party was objecting to the re-planning of the plot by the Council. The applicant argues that its side of the story was not heard after the interested party wrote the said letter.

The papers filed in court, however, tell a different story. It is clear from the Minister’s letter dated 12th February, 2001 that the approval had been done prior to the interested party’s letter of 4th August, 2001. The Minister’s letter of 12th February, 2001 conveys this information thus:-

“In the meantime the Hon. Minister had already given his approval for transfer of plot No Githunguri/Nyaga/529 to the PCEA Church. However this could not be immediately acted upon due to your letter Ref. No.KCC/LG/5/13B/Vol. V/58 of 26/1/99 which at the last paragraph stated as

follows “to enable the office reconsider this allocation, kindly stop further transactions on the above parcel.” On the strength of your letter this Ministry has not acted further on the application for approval for transfer to the PCEA Church or any other parties.

It therefore comes as a surprise to see copies of title deeds for the resultant subdivisions particularly No. Githunguri/Nyaga/1213 for the Ngewa Community Group. The whole transaction is and does not have the support of this Ministry and approval of the Commissioner of Lands. The Minister for Local government has not given any approval for the transfer of the land to the Ngewa Community as required by law. In any case according to your letter dated 26/1/99 aforementioned you were to reconsider the application and thereafter get back to us. This has not been done to-date.”

It should be noted that although the above quoted letter from the Minister refers to the letter of the Council dated 26th January, 1999, the letter that contains the information referred to is dated 26th July, 1999. I therefore presume that there was a mistake about the date of the letter. There is however no harm caused to the case of any of the parties by the said mistake.

The Minister was therefore not influenced in any way by the letter of the interested party since he had made his decision before receiving the letter in question. The Minister clearly indicated through the letter dated 12th February, 2001 that he had already approved the Council’s decision to allocate the plot to the interested party. There is no evidence that the Minister acted in excess of jurisdiction or in breach of the rules of natural justice when he took the said action. It must be noted that the Minister did not take any other action since he had been requested by the Council through the letter dated 26th July, 1999 to stop any further action.

It must also be noted that the Council considered and approved the re-planning through its full Council meeting of 31st May, 2001. By that time the Minister had already approved the allocation of the parcel of land in question to the interested party. The Minister cannot therefore be accused of having acted in bad faith. He had already approved the Council’s allocation of the parcel of land to the interested party by the time the Council was carrying out the re-planning. The applicant did not make the Council a party to these proceedings and the court is therefore not in a position to know what the Council could have had to say about this application.

It must also be noted that the facts surrounding this application are disputed. Judicial review is only ideal in a situation where the facts are not disputed. In the case before this court it is difficult to verify the facts and judicial review remedies are not appropriate in the circumstances. The parties will have a clear answer to their dispute once the civil case is determined.

All in all, I find that the application herein is unmerited. The same is therefore dismissed with no orders as to costs.

Dated, signed and delivered at Nairobi this 29th day of May, 2013

W. K. KORIR

JUDGE