



PETER MALONZA.....	1 ST APPLICANT
JOSEPH KIIGE MWAURA	2 ND APPLICANT
STEPHEN KENGARA	3 RD APPLICANT
KENETH M NGIGE	4 TH APPLICANT
SIOHIA WANJIKU JOHN	5 TH APPLICANT
JOHN M NGAHU	6 TH APPLICANT
GEOFFREY KARUGONGO	7 TH APPLICANT
ISAAC NDUNGU	8 TH APPLICANT
GERALD MACHARIA GIKONYO	9 TH APPLICANT
DUNCAN THUKU NYAGA	10 TH APPLICANT
GEOFFREY GATHOGO	11 TH APPLICANT
PATRICK KIIRU KAMAU.....	12 TH APPLICANT
KINYANJUI KAHUGU	13 TH APPLICANT
DINAL J NKOROI	14 TH APPLICANT
EIDITH KIGERA	15 TH APPLICANT
MAINA KANYUTU	16 TH APPLICANT
GIKONYO.....	17 TH APPLICANT
K MUNGAI	18 TH APPLICANT
ROSEMARY MAGANJO	19 TH APPLICANT
MOSES MAINA.....	20 TH APPLICANT
FRANCIS GATHERE	21 ST APPLICANT
MIYA FWENY MALEA CHURCH	22 ND APPLICANT

POWER OF HOLY GHOST CHURCH23RD APPLICANT
FULL GOSPEL CHURCH24TH APPLICANT
AL NOR MOSQUE25TH APPLICANT

VERSUS

MINISTER IN THE MINISTRY OF

YOUTH AFFAIRS & SPORTS1ST RESPONDENT
DIRECTOR NATIONAL YOUTH SERVICE2ND RESPONDENT
THE COMMISSIONER OF LANDS3RD RESPONDENT
CHIEF LAND REGISTRAR4TH RESPONDENT

RULING

By way of chamber summons application dated 16th January, 2012 the ex-parte applicants seek orders as follows:-

- 1. THAT the Fourth Respondent do provide the Honourable court and the Applicants all the files, documents and maps relating to Land Parcel Number L.R. 24901, L.R. 217/2 and L.R. 7878/1 or certified copies thereof.**
- 2. THAT the Applicants be allowed to cross examine Mr. Albert Too on his two affidavits sworn in reply to this Judicial Application on behalf of the Respondent.**
- 3. THAT the costs of this application be provided for.**

The application is supported by the grounds on its face and a supporting affidavit sworn on 16th January, 2011 by Robert Njiru Mbogo the ex-parte applicants' counsel.

Counsel for the ex-parte applicants argued, in support of the application, that attempts to obtain documents relating to the parcels of land in question from the 4th respondent have hit a brick wall. It is the ex-parte applicants' claim that only an order by this court can make them access the said documents. On the second prayer counsel argued that the two affidavits sworn by Albert Too gave conflicting information and the best way to reconcile the affidavits was by way of cross-examination.

In response to the application the 1st, 2nd, 4th and 5th respondents filed grounds of opposition. In the grounds of opposition the four respondents argue that the application is an abuse of the court process and the orders sought cannot be issued in judicial review applications.

Judicial review is concerned with ensuring that a subordinate court or administrative agency acts within its jurisdiction. It also ensures that the activities of the subordinate court or administrative agency are lawful. Paul Craig (**Administrative law, 6th edition, paragraph 1-005**) had this to say about judicial review:-

“There is a distinction between appeal and review. The former is concerned with the merits of the case, in the sense that the appellate court can substitute its own opinion for that of the initial decision maker. Appeals can lie on fact and law, or simply upon law. Such rights of appeal are

statutory, and the court possess no inherent appellate jurisdiction. Review is, at least in theory, different from this. It is concerned not with the merits of the decision, but with its “validity” or with the “scope” of the agency’s power. The courts’ power of review is not based upon statute, but upon an inherent jurisdiction within the superior courts.”

My understanding of judicial review therefore is that it deals with matters with straight forward and undisputed facts. Where facts are disputed, such a case should go to a full hearing before a court seized with powers to determine the case on merit. I have looked at the documents filed in court by the ex-parte applicants. It is presumed that at the time they came to court they must have had all the necessary documents to support their ownership of the plots in question. The respondents have put forward their side of the story. The ex-parte applicants cannot say that they want the 4th respondent to produce the documents they are relying on so that the ex-parte applicants can use those documents in support of their case. In any case, the documents in question are public documents and the ex-parte applicants can always access those documents by following the procedures laid down by the 4th respondent.

As already demonstrated, judicial review is a special jurisdiction based on the inherent jurisdiction of the court. Only in rare circumstances are witnesses called in judicial review proceedings. If witnesses are allowed in such proceedings the matters will be bogged down and yet judicial review is meant to provide a fast and efficacious remedy to the applicants. Allowing the cross-examination of Mr. Albert Too on the contents of his affidavits may not add any value to the ex-parte applicants’ case. It should be noted that cross-examination is a procedure that is usually exercised in very few judicial review applications and the applicant should give good reasons as to why a witness should be cross-examined. The fact that witnesses are rarely called in judicial review matters was clearly noted by Beverly Lang at page 108 of the 1st edition of **ADMINISTRATIVE COURT: PRACTICE AND PROCEDURE** when he stated that:-

“The Administrative Court also has a limited capacity to resolve disputes of facts since the vast majority of cases are determined without oral evidence and without the normal process of disclosure (applications to cross-examine witnesses and for disclosure may be made under CPR Parts 8 and 31, but are exceptional (PD54 para. 12.1)).”

The ex-parte applicants have not established any good reason as to why Mr. Albert Too should be cross-examined on his affidavits. The fact that the affidavits are contradictory is not a good reason for allowing cross-examination of the deponent.

After carefully considering the application before me, I reach the conclusion that the same has no merit. The same is therefore dismissed with costs to the respondents.

Dated and signed at Nairobi this 29th day of February, 2012 .

W. K. KORIR

JUDGE