



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
JUDICIAL REVIEW NO. 12 OF 2011
IN THE MATTER OF REGISTERED LAND ACT CAP 300 LAWS OF KENYA
AND
IN THE MATTER OF CANCELLATION/RECTIFICATION OF TITLE NO. CIS
MARA/OLDONYO RASHA/377

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

COMMISSIONER OF LANDS.....1ST
RESPONDENT
DISTRICT LAND REGISTRAR, NAROK.....2ND
RESPONDENT

AND

LEMITA OLE LEMEIN.....INTERESTED
PARTY

EX-PARTE
LEKINYOT OLE

LANKE.....SUBJECT

JUDGMENT

By the Notice of Motion dated 24/2/2011, Lekinyot Ole Lanke (subject, hereinafter referred to as the ex-parte applicant) seeks an order of certiorari to issue against the Commissioner of Lands and District Land Registrar, Narok (1st & 2nd Respondents) for purposes of quashing the cancellation and rectification of the register in respect of land parcel No. Cis Mara/Ol Donyo Rasha/377 through which the name of the ex-parte applicant was removed and replaced with that of Lemita Ole Lemein, by the District Land Registrar, Narok. The application is premised on grounds found in the statutory statement dated 4/2/2011, the verifying affidavit sworn by the applicant on the same date and a supplementary affidavit dated 25/5/2011. Mr. Ogola, counsel for the applicant also filed skeletal arguments on 13/7/2011.

The respondent though served did not file any papers or appear.

Lemita Ole Lemein was named as an Interested Party in this matter. He filed a replying affidavit dated 6/6/2011. Mr. Karanja Mbugua counsel for the Interested Party filed submissions on 13/7/2011.

A brief background of the applicant's claim is that he purchased land parcel Cis Mara/Ol Donyo Rasha/377 from Oloishuro Ole Sipeyai at Kshs.550,000/- as evidenced by the sale agreement dated 4/11/09 (LOL I). He obtained title on 11/11/09 (LOL II) and took possession but the Interested Party informed him that he bought the same parcel in 2002. He learned from the former owner that the Interested Party had filed a claim at the Land Disputes Tribunal No. 6/2010, the matter was heard and an award was made on 14/1/2010 (LOL IV) which was adopted as an order of the court on 26/1/2010 (LOL IV). Although the applicant was the registered owner, he was not informed of the proceedings at the Tribunal or cancellation of title which was done on 20/9/2010 (LOL V). The 2nd respondent asked the applicant to surrender his original title but he was never informed of cancellation and rectification of title. It is the applicant's contention that the cancellation of his title was based on Land Disputes Tribunal Case No. 6/2010, yet he was not party to the said claim, he was never notified of the claim before the Tribunal and the respondents were therefore in breach of the rules of natural justice and the Land Registrar abused his power; that the decision was unreasonable and ultra vires the **Land Disputes Tribunal Act of 1990** and the **Registered Land Act Cap 300 Laws of Kenya**.

In opposing the application, Ole Lemein deponed that the application is an abuse of the court process; that the order sought to be quashed was not exhibited; that the Land Disputes Tribunal dealt with the subject parcel of land to its conclusion and the applicant participated in the proceedings before the Tribunal; that the Tribunal made a finding and the applicant did not appeal against it and the same was adopted as an order of the court; the Land Control Board consent was sought on 16/9/2010 and the Registrar was merely effecting a valid court's order. The Interest Party contends that this application is an abuse of the court process because there exists Nakuru JR 21/2010 over the same subject matter, the applicant has also filed HCC 245/2010 against the Interested Party herein seeking similar reliefs (LOL III) and that this suit was filed after the court on 15/12/2010 discharged an injunction order granted in HCC 24/5/2010 (LOL IV) and that both the JR and Civil matters are still pending.

I have keenly gone through the application, pleadings and submissions by both counsel. It is not disputed that there were proceedings relating to the subject land before the Land Disputes Tribunal Ololunga. Neither the applicant nor the Interested Party exhibited the proceedings of the Land Disputes Tribunal. The applicant only exhibited the decision of the Tribunal. That decision was adopted by an order of the court on 26/1/2010. The order of the Land Disputes Tribunal stated inter alia:-

- “1. That the agreement reached between both parties over the sale of land is true as agreed upon by both of them on 2nd day of May 2002;**
- 2. That the second agreement of sale of land between Mr. Oloishiro Sipiya and Mr. Lekinyot Ole Lanke is a breach of law since the parcel Cis-Mara Oldonyo Orasha/377 had already been sold to Mr. Lemita Ole Lemein as per the agreement, which is an offence under the laws of Kenya;**
- 3. That this land dispute direct Lemita Ole Lemein to pay back a sum of Kenya shillings sixty five thousand (Ksh.65,000) to Oleoishuro Ole Sipiyai being half of unpaid from the original acres accrued unpaid;**
- 4. That we direct the land registrar to cancel the title deed issued to Lekinyot Ole Lanke and issue the same to Lemita Ole Lemein is a rightful owner of the parcel.**
- 5. Notwithstanding with Section 7(1) and (2) any one aggrieved by this decision shall appeal to the Appeal Committee within 30 days.”**

It was signed by three members and was adopted as an order of the court. The Land Registrar in canceling the title was effecting the court's order. The said court's order is still subsisting. It was not appealed

against to the Appeals Committee or by way of Judicial Review or appeal to the High Court. In my view, the ex-parte applicant has not demonstrated that the respondent abused his power in any way. Even if the order of the Tribunal was illegal or irregular, the duty of the Registrar was to enforce it and that is what he did. The legality or otherwise of the Tribunal's order could only be challenged in the manner I have stated above, by Judicial Review or appeal to High court or appeal to the Appeals Committee. If the Registrar did not comply with the court's order, he may have been held in contempt of the court's order. The allegation that the Registrar's decision was unreasonable is untenable

As earlier pointed out, neither the applicant nor the Interested Party exhibited the proceedings before the Tribunal. The applicant complains that he was not a party to the proceedings before the Tribunal even though he was an Interested Party in the subject land, having been registered as the owner. He therefore claims that rules of natural justice were not observed. In reply, the Interested Party contends that the applicant fully participated in the proceedings before the Tribunal. There is no way the court can confirm whether or not the applicant participated in the said proceedings because this court has not had the privilege of seeing them. If any rules of natural justice were flouted, it was by the Land Disputes Tribunal. The Registrar merely put into effect the Tribunal's decision as he was bound to and cannot be faulted for that.

The applicant seeks to have the decision of the Land Registrar quashed. The jurisdiction of the Tribunal under **Section 3** of the **Land Disputes Tribunal Act No. 18 of 1990** is to adjudicate on disputes of a civil nature relating to trespass, use of land and disputes over boundaries. It had no jurisdiction to deal with issues of title registered under the **Registered Land Act Cap 300 Laws of Kenya**. That jurisdiction is the preserve of the High Court or the lower court with limited jurisdiction under **Section 159** of the **Registered Land Act**. It seems therefore that the Land Disputes Tribunal acted outside its powers and if indeed the applicant was not given a hearing or if he was not party to the proceedings at the Tribunal, then he has suffered injustice. But as I have said earlier, the challenge herein is to the Land Registrar's decision. There is no attack on the decision of the Tribunal. So that even if the court were to grant the order sought and quash the decision of the Land Registrar and Commissioner of Lands, yet the award of the Tribunal and the order of the court adopting the award would still remain subsisting. It would not be beneficial to the applicant. For those reasons, the order of certiorari cannot be granted in vain because it is not the most efficacious remedy in the circumstances.

It was the Interested Party's contention that the application is incompetent because the impugned decision was not exhibited. **Order 53 Rule 7** requires that the impugned decision be lodged with the Notice of Motion or before hearing the motion and if it cannot be lodged, an explanation must be given as to why it cannot be lodged. The impugned decision was not lodged with the court before the hearing of the Notice of Motion nor did the applicant offer any explanation as to why it could not be lodged. That notwithstanding, this court is alive to the fact that not all decisions made are documented. I do agree with J. Emukule's observation that **"a decision, one or the other way is not a one affair. It may like a contract, be composed of a series of decisions, an offer, and acceptance, a variation and confirmation all amounting to one contract."** See **Rep V. Registrar of Companies ex-parte Joseph Mathengu Muturi & 6 Others – JR 58/2010**. The fact that the applicant's title was cancelled is in itself evidence of the fact that the Land Registrar effected the court's order that the applicant's title be cancelled and what the Registrar did amounts to a decision taken.

In the end, I find that the applicant has failed to demonstrate that the Registrar denied the applicant the right to hearing or that the Registrar abused his power or that he acted outside his mandate under the **Land Disputes Tribunal Act** and the **Registered Land Act Cap 300 Laws of Kenya**. I therefore dismiss the application as lacking merit and brought before the wrong forum. Each party to bear its own costs.

DATED and DELIVERED this 17th day of February, 2012.

R.P.V. WENDOH

JUDGE

PRESENT:

M/S Otieno holding brief for Ogola for the applicant.

N/A for the respondent.

Mr. Karanja Mbugua for the Interested Party.

Kennedy – Court Clerk.