



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

MILIMANI LAW COURTS

Miscellaneous Civil Application 206 of 2011

IN THE MATTER OF: AN APPLICATION BY PETER KAROBIA RIBIRO AND MUNYWE RIBIRO MUNYWE FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION

BETWEEN

REPUBLIC.....APPLICANT

-VERSUS-

THE LAND REGISTRAR.....RESPONDENT

EX-PARTE

- 1. PETER KAROBIA RIBIRO**
- 2. MUNYWE RIBIRO MUNYWE**

J U D G M E N T

The Ex-parte Applicants herein Peter Karobia Ribiro and Munywe Ribiro Munywe obtained leave from this court on 25th October, 2011 to institute judicial review proceedings against the Respondent, the Land Registrar Kiambu for orders of Mandamus to compel the Respondent to register the exparte applicants as the registered proprietors of Land Parcel No.Kiambaa/Ruaka/639.

The substantive motion for judicial review was filed on 27th October 2011 duplicating the prayer for an order of mandamus in the terms stated on the chamber summons dated 25th August 2011 seeking leave to commence judicial review proceedings.

Though the Notice of Motion was served on the Respondent, the Respondent did not file any response to the application in the form of either replying affidavit, grounds of opposition or written submissions though there is evidence that the Respondent was duly served with the Applicant's written submissions. The Respondent was also served with a Hearing notice to notify him of hearing date on 17th January 2012 but no appearance was made on his behalf. In the circumstances the Applicant's application is

unopposed.

The Exparte applicant's case is that they are sons and beneficiaries to the Estate of their Late mother Margaret Wanjiru Ribiro who died on 13th April 1998.

The annexures to the verifying affidavit confirm that the exparte applicants obtained letters of administration to the said Estate in High Court Succession Cause P&A NO.3519/2003 and the grant was confirmed on 10th November 2004. The confirmation of grant exhibited and marked "PKRI" shows clearly that the Estate of Margaret Wanjiru Ribiro comprising of Land L.R. No. Kiambaa/Ruaka/639 measuring 2.30 acres should be shared by the exparte applicants in equal shares.

It is the applicant's case that they presented the said confirmation of grant to the Respondent to facilitate transfer of the said property into their names as the registered proprietors thereof by transmission but the respondent has for no good reason refused and/or failed to effect the said registration. In paragraph 6,9,10,11 of the verifying affidavit, Peter Karobia Ribiro depones that at the time of filing this suit, the respondent had not communicated to them his reasons to refuse to register them as proprietors of the land in question by transmission. He has also deponed that even by the time of her death, their mother was the registered proprietor of the land in question as exhibited by annexures marked PK3 and PK4 being certificate of official search and copy of the Green Card.

As the application is not opposed, these averments by the applicants have not been contraverted. No reason has also been given by the Respondent to explain why he has failed to execute his public duty of executing court orders in Succession Cause No.3519/03.

It is worth noting that all inhibitions and/or encumbrances which had been registered against the title to the land in question were removed by virtue of a court order issued in the same Succession Cause on 30th May 2006.

In view of the foregoing, I find that there is no justification at all for the Respondent to refuse to register the exparte Applicants as the proprietors of L.R No. Kiambaa/Ruaka/639 by transmission as per terms of the confirmation of grant dated 10th November 2004.

The scope and efficacy of the writ of mandamus was discussed by the Court of Appeal in the case of Kenya National Examinations Council –V- Republic Exparte Geoffrey Gathenji & 9 Others,C/Appeal No.266/1996 in which the court quoted with approval excerpts from Halsbury's Law of England 4th Edition Vol. I, page 111 from paragraph 89. The Court of Appeal noted that

“The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual..... The order must command no more than the party against whom the application is made is legally bound to perform.....”

It is not disputed that the Respondent is a public officer entrusted to perform public duties which include among others registration of interested persons as proprietors of land upon transfer by transmission or otherwise.

The Respondent in this case has failed and/or refused to execute that duty for no apparent reason and I am satisfied that this is an appropriate case for issuance of an order of mandamus to compel the Respondent to execute his aforesaid public duty as directed by the High Court in the confirmation of grant issued in Succession Cause No.3519/03.

In the circumstances, I find merit in the Notice of Motion dated 24th October 2011 and it is hereby allowed in terms of Prayer 1 with no orders as to costs.

Dated, Signed and Delivered by me at Nairobi this 1st day of February, 2012.

C. W. GITHUA
JUDGE

In the presence of:

Florence – Court Clerk

Kenyatta holding brief for Kabiru for Applicants

N/A for Respondent