



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MISCELLANEOUS CIVIL APPLICATION 84 OF 2011

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF
CERTIORARI, PROHIBITION AND MANDAMUS**

AND

IN THE MATTER OF GAZETTE NOTICE NO. 6652

BETWEEN

EMFIL LTD. EXPARTE APPLICANT

VERSUS

REGISTRAR OF TITLES MOMBASA 1ST RESPONDENT

THE COMMISSIONER OF LANDS 2ND RESPONDENT

HON. ATTORNEY GENERAL 3RD RESPONDENT

RULING

(1) By my ruling of 30th May 2012, I directed that the court would “**visit the suit property to determine the position on the ground including the development status of the property; the possession of the Applicant; any encroachment by squatters; and settlement by other stakeholders by gift and sale as alleged by the Applicant.**” I reasoned that the situation on the ground has a bearing on the eventual outcome or final order of the court in this proceedings. I set the court visit for the 27th June 2012.

(2) Before court visit could be undertaken, counsel for the Applicant has objected to the court visit to the suit property by a letter to the court dated 26th June 2012 and through oral submissions made in court on the 27th June 2012 and 10th July 2012. Counsel contends that such a visit would be irrelevant to the issue before the court and a waste of judicial time. Counsel isolates the issue before the court as simply one of the legality of the Registrar’s action in purporting to cancel the Applicant’s title to the suit property

through a Gazette Notice, for which determination, counsel contends, there is no need for a court visit to the suit property. Counsel also submits that there is no dispute that the suit property has been occupied by squatters who have been allocated parcels of land in the suit property by the Respondents in contempt of the court order for stay upon leave granted.

(3) Counsel for Respondents supports the court visit pointing out that the court had sought to establish the development status of the property and the Applicant's possession and that of the stakeholders associated with the Applicant in addition to the encroachment by squatters. Counsel also objected to the informal format of the application by way of a letter of 26th June 2012 seeking review of the court ruling of 30th May 2012. Counsel emphasized that the subsequent application for contempt of court against the Respondents for allegedly allocating the suit property to the squatters was a justification for the court visit to the suit property.

(4) I have considered the matter and I find that the principle of substantial justice without regard to technicalities dictates that I consider the Applicant's informal application by way of a letter to the court especially where as here no prejudice has been suffered by any party as both parties have subsequently been orally heard on the application.

(5) On the same principle of substantial justice, I consider that the nature and extent of settlement and development by the third parties on the suit property whether on allocation by the Respondents or otherwise, and of the Applicant's own possession and development on the land are important factors to be considered in the formulation of the final orders of the court in these proceedings. With respect, I have not heard anything from the counsel for the parties to warrant a review of my direction regarding the court visit to the suit property.

(6) In order to bring this matter to an expedited determination, I make the following directions:

(1) The court will visit the suit property on Monday the **23rd July 2012 beginning 12.00 noon**. The Deputy Registrar of the Court will make all necessary logistical arrangements for the court to visit the suit property.

(2) The matter will be mentioned on the **23rd July 2012 at 9.00 am** to confirm the arrangements for court visit to the suit property later that day.

(3) The advocates for the parties will within 7 days after the court visit make such further written submissions as they may deem necessary following the court visit to the suit property.

(4) The court will following the court visit to the suit property give its Judgment on the Notice of Motion herein on the **23rd August 2012**.

Dated and delivered this 17th day of July 2012.

EDWARD M. MURIITHI
JUDGE

In the presence of: -

Mr. Ochieng for the Applicant

Miss Lutta for the Respondents

Mr Buoro - Court Clerk