



REPUBLIC OF KENYA

High Court at Kakamega

Judicial Review 25 of 2011

**IN THE MATTER OF THE REGISTERED LAND ACT
AND**

**IN THE MATTER OF THE LAND CONTROL ACT
AND**

IN THE MATTER OF LAND PARCEL NO. S/KABRAS/CHEMUCHE/2804

AND

**IN THE MATTER OF LAND CONTROL BOARD DIVISION APPLICATION TO TRANSFER
LAND PARCEL NUMBER S/KABRAS/CHEMUCHE/2804**

**BETWEEN
REPUBLIC (EX-PARTE)**

**JOHN MBOTO CHITAYI
APPLICANT**

VERSUS

**THE CHAIRMAN, LAND CONTROL BOARD – KABRAS
RESPONDENT**

AND

EZEKIEL MUTUMBA LITOKHO

**NELSON MMAS SUKUNWA
INTERESTED PARTIES**

RULING

The Notice of Motion dated 17.5.11 seeks orders that the Chairman, Land Control Board Kabras be compelled by an order of MANDAMUS to issue a consent letter to the ex-parte applicant herein of the transaction approved by the Kabras Land Control Board on 8th February, 2011 regarding land parcel number S/KABRAS/CHEMUCHE/2804.”

The application is supported by the affidavit of the applicant JOHN MBOTE CHITAYI, sworn on 17.5.2011.

According to the said affidavit, the applicant's case is that he bought the land, the subject matter of this application in the year 2007 from the 2nd interested party, NELSON MMASI SUKUNWA. The applicants then applied for the consent of the land control board. The applicant further averred that the consent to transfer was approved but the Chairman of the board refused/failed to release the consent documents. The reason given for the failure to issue the consent document was that the land belonged to the 1st interested party.

In opposition to the application, the 1st respondent, EZEKIEL MUTUMBA LITOKHO filed a replying affidavit sworn on 18.10.2011.

It is the 1st interested party's contention that there is no privity of contract between him and the applicant who has dragged him into this dispute that is between the applicant and the 2nd interested party. The 1st Interested Party further contented that he bought the land from the 2nd Interested Party in the year 2000 and settled there with his family.

The 1st Interested Party supported the respondent's refusal to give consent to the 2nd interested party to transfer the land to the applicant, stating that the 2nd interested party failed to disclose to the board the person who was in occupation of the land. The 1st interested party has further averred that he was the 1st purchaser of the land and therefore the applicant has no better claim.

The dispute that arose out of the land sale transaction between the 1st and 2nd interested parties was settled in Kakamega CMCC No. 347/2007 (annexture "JMC1") where the court arrived at the following decision, *inter alia*;

"..... I hereby order in terms of section 7 of the Land Control Act, the defendant do recover the said sum from the plaintiff as debt."

The plaintiff was NELSON MMASI (the 2nd interested party) while the defendant was EZEKIEL MATUMBI (the 1st interested party).

It appears no appeal was lodged against the said judgment of the lower court. None has been exhibited in the case herein. The judgment of the lower court therefore stands.

The minutes of the Land Control Board meeting (annexture "JM2") in minute No. 5/02/2011 S/KABRAS/CHEMUCHE/2804 reflects that NELSON MMASI SUKUMWA (interested party No.2) was granted leave to transfer land parcel measuring 0.37 Ha. to the applicant herein.

It appears, no appeal was lodged against the decision of the Land Control Board also.

The Land Control Board therefore has no good reason for the failure to issue the applicant with the consent form. If there were any good reasons, the Chairman of the Land Control Board, Kabras, who is sued as the respondent herein ought to have participated in these proceedings to ventilate to the same.

With the foregoing, I find the application has merits and the same is allowed. Taking into account the circumstances of this case, each party to meet own costs.

Dated, delivered and signed at Kakamega this 29th day of November, 2012

B. THURANIRA JADEN
J U D G E