



REPUBLIC OF KENYA



KENYA LAW
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**Daniel Waweru Maina (Judicial Review Application
20 of 2021) [2022] KEELC 3944 (KLR) (27 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3944 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
JUDICIAL REVIEW APPLICATION 20 OF 2021**

A NYUKURI, J

JULY 27, 2022

**IN THE MATTER OF: AN APPLICATION BY DANIEL WAWERU
MAINA FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDER
OF MANDAMUS TO COMPEL THE LAND REGISTRAR OF
MACHAKOS REGISTRY TO PROVIDE RELEVANT INFORMATION
AND DOCUMENTATION OF THE COURT ORDER REGISTERED
OVER TITLE NUMBER MAVOKO TOWN BLOCK 2/3908**

ENTERED ON 4TH APRIL 2019

AND

**IN THE MATTER OF ARTICLE 47 OF THE CONSTITUTION OF KENYA,
2010**

AND

**IN THE MATTER OF SECTIONS 7 AND 9 OF THE FAIR
ADMINISTRATIVE ACTION ACT, NO. 4 OF 2015**

AND

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT
CAP 26 LAWS OF KENYA**

BY

DANIEL WAWERU MAINAAPPLICANT



RULING

Introduction

1. Vide an ex parte Chamber Summons dated 25th November 2021, brought under Order 53 Rules (1) and (2) of the [Civil Procedure Rules](#), the Ex parte Applicant sought for the following orders;
 - a. Spent.
 - b. That leave do issue for the Applicant to apply for;
 - i. An order of Mandamus by this honourable court to compel the Machakos Lands Registrar to avail relevant pleadings, application form and the court order registered on 4th August 2019 over title Number Mavoko Town Block 2/3908.
 - ii. An order of Mandamus be directed to the Lands Registrar to compel them to make known all matters pertaining to title Number Mavoko Town Block 2/3908.
 - c. That costs of the application be provided for.
2. The application is anchored on the statutory statement dated 25th November 2021 as well as the verifying affidavit sworn on 17th November 2021. The Applicant's case is that he is the registered proprietor of title No. Mavoko Town Block 2/3908, and that a search done on the same on 11th August 2020 revealed that a caution was registered against the said title in the year 2012. That in addition the search revealed that a court order was registered on 4th April 2019 against the suit title. The applicant therefore complained that the Land Registrar has refused to provide copies of the said court order without any legal reason or basis and that he needs the said order to enable him file the relevant applications in court to lift the said order, which actions have frustrated the enjoyment of his right to property.
3. Order 53 Rule 1 of the Civil Procedure Rules grants this court the power to grant leave to an applicant to seek for orders of Judicial Review as follows:
 1. No application for an order of Mandamus, prohibition or certiorari shall be made unless leave therefore has been granted in accordance with this rule.
 2. An application for such leave shall be made ex parte to a judge in chambers and shall be accompanied by –
 - a. A statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought; and
 - b. Affidavits verifying the facts and averment that there is no other cause pending, and that there have been no previous proceedings in any court between the applicant and the Respondent, over the same subject matter and that the cause of action relates to the Applicants named in the application.
 3. The judge may, where leave denotes stay, impose such terms as to costs and as to giving security as he thinks fit including cash deposits, bank guarantee or insurance bond from a reputable institution.
 4. The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until



the determination of the application, or until the judge orders otherwise: provided that where the circumstances so require, the judge may direct that the application be served for hearing interpartes before grant of leave. Provided further that where the circumstances so require the judge may direct that the question of leave and whether grant of leave shall operate as stay may be heard and determined separately within seven days.

4. The responsibility of the court in considering an application for leave to apply for judicial review orders, is to eliminate frivolous applications and ensure that only prima facie cases proceed to the substantive hearing. In the case of *Republic vs. County Council of Kwale & Another Exparte Kondo & 57 Others* (Mombasa HCMCA NO. 384 of 1996), the court stated the purpose of an application for leave to be as follows;
 - i. Firstly, to eliminate at an early stage any applications for judicial review, that are either frivolous, vexatious or hopeless.
 - ii. Secondly, to ensure that the applicant is only allowed to proceed to substantive hearing if the court is satisfied that there is a case fit for further consideration.
5. Therefore, the Applicant at this stage must satisfy the court that he has an arguable case fit for further investigation at the interpartes hearing of the substantive motion.
6. In the instant suit, the Applicant's complaint is that the search done on 11th August 2020 on his title Mavoko Town Block 2/3908, revealed that a court order to the effect that there should be no dealings on the title, pending hearing and determination of the suit was registered on 4th April 2019. I have had opportunity to peruse the said search. Entry No. 8 thereon states as follows; "4.4.2019 Order no. dealings pending the hearing and determination of this suit". It is clear that the particulars of the case that led to the order referred to in at entry No. 8 including the name of the court, and the case number is not disclosed. This means that the Applicant cannot be able to know from which court the alleged order was issued and the case number thereof, hence he cannot be able to challenge the same. The Applicant has demanded and sought that the particulars of the undisclosed order referred to entry No. 8 of the register be provided to him by the Land Registrar Machakos registry.
7. It is my view that as entry number 8 on the register of Mavoko Town Block 2/3908 has the effect of impeding the Applicant's enjoyment of his right to property, the Applicant is prima facie entitled to further particulars of the same from the Land Registrar. In the premises, I am satisfied that the Applicant has made out an arguable case, fit for further interrogation at the interpartes hearing of the substantive motion.
8. I therefore allow the application as prayed and order that the substantive motion be filed within 21 days from the date hereof. Having noted that the Land Registrar Machakos has been referred to as the Respondent in the body of the statutory statement, without being named as such in the title of the suit, I invoke the provisions of Order 53 Rule 4 of the Civil Procedure Rules as well as the inherent powers of this court and direct that the Exparte Applicant to include the Land Registrar Machakos as the Respondent in the title of the suit and the Republic as the Applicant.
9. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 27TH DAY OF JULY 2022 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE



In the presence of;

Ms Mutua holding brief for Ms Omollo for the Applicant

No appearance for the Respondent

Josephine Misigo – Court Assistant

