



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
JUDICIAL REVIEW NO 67 OF 2011

AMOS MWANGI KARANJA.....APPLICANT

VERSUS

THE DISTRICT LAND REGISTRAR
NYAHURURU.....1ST RESPONDENT

THE HON ATTORNEY GENERAL.....2ND RESPONDENT

RULING

The Ex parte applicant herein is Amos Karanja, who seeks leave of this court to commence Judicial Review proceedings against the District Lands Registrar Nyahururu, and the Hon. the Attorney General. He has also named Interested Parties in this matter. They are as follows:- Eddie Wambua Karanja, Nancy Wangui Karanja, Marata Wangari Kambi, David Njogu Kambi, Peter Nderitu Kambi, Charles Muchina Kambi, Samuel Kiboi Kambi and Amos Weru Murigu.

The prayers sought in the Chamber Summons are as follows:-

- 1. That this application herewith be certified as urgent and service of the same be dispensed with in the 1st instance for reasons of urgency.**
- 2. That this honorable court be pleased to grant leave to the applicant herein to apply for an Order of PROHIBITION directed at the District Land Registrar Nyahururu, the 1st respondent herein, his servants, Agents, persons acting directly under his instructions or any other person whatsoever acting on his behalf from allowing any transactions, dealings, survey, sub-division or any other adverse dealings in relation to all the sub-divisions arising there from and particularly referenced at the District lands Registry as 4991,4992,4993,4994, 4995 and 4996.**
- 3. That the applicant herein be granted leave to apply for an order of MANDAMUS directed at the District Lands Registrar, Nyahururu, the 1st respondent herein compelling him to forthwith cancel the sub-divisions arising therefrom and particularly referenced at the District Lands Registry, Nyahururu as 4991,4992,4993,4994, 4995 and 4996 and the same to revert to Nyandarua /South Kinangop/66.**

4. That the applicant herein be granted leave to apply for order of MANDAMUS directed at the District Lands Registrar, Nyahururu, the 1st respondent herein compelling him to forthwith recall and forthwith cancel the said titles held in the names of the 3rd 4th, 5th and 7th interested parties and the same be registered in the joint names of AMOS MWANGI KARANJA, EDDIE WAMBUA KARANJA and NANCY WANGUI KARANJA, the administrators to the estate of the deceased person, KARANJA GATURU.

5. That the grant of leave herein do operate as stay of an intended transaction, dealings, transfer, sub-divisions or any other adverse dealings in respect of all that that parcel of land known as Nyandarua/South

Kinangop/66 and all the sub-divisions arising therefrom and particularly referenced at the District Lands Registry, Nyahururu as 4991,4992,4993,4994,4995 and 4996.

The application is grounded on the statutory statement and verifying and supporting affidavits sworn by Amos Mwangi Karanja the applicant, who claims to be one of the administrators of his later father's estate (Karanja Gaturu) with the 1st and 2nd Interested Parties. (AMKI-Grant). The applicant deposed that the deceased folio was the owner of Nyandarua/South Kinangop /66 having purchased it from Kambi Kaniarithia, the late husband of the 3rd Interested Party Marata Kambi. When Kambi died in 1975, the 3rd interested party filed a suit in Naivasha Magistrate's Court, **no 52 of 1985 Marata Wangari Karanja Vrs Gaturu Karanja** (AMK 3). The court found in favour of the applicant's father, Gaturu Karanja that he had bought the land and paid the full purchase price. The elders award made in Naivasha CC52/1985 was confirmed as judgement of the Court. There have been numerous disputes over the land in various forums and the last one was a decision by Justice Mbogholi HCC Misc 33/10 delivered on 17/3/2011 in which he found the decision on Naivasha PMCC 52/85 to be valid and not appealed against. Thereafter the 3rd and 7th Interested Parties with the first defendant fraudulently, procured the subdivision of the said land into several parcels 4991 to 4996 as evidenced by copies of titles (AMK 13). The applicant is apprehensive that the Interested Parties are likely to put up the land for sale and that is why he brought these proceedings to preserve the deceased's estate from wasting.

Ordinarily, this application should have been heard ex parte, but the Judge before whom the matter was presented, in his wisdom, ordered that the same be heard inter parties. The Respondent was served but there was no appearance at the hearing. It proceeded to hearing ex parte.

At this stage the court need not consider the issues herein in much detail but only need to determine whether the applicant has demonstrated that he has an arguable case. In the case of **NJUGUNA Vrs MINISTER FOR AGRICULTURE (2000) IEA 184**, discussed the test for whether or not to commence Judicial Review proceedings should be granted the Court said. **"The test on to whether leave should be granted to an applicant for Judicial Review is whether without explaining the matter in any depth there is an arguable case that the relief sought will be granted on the hearing of the substantive application"**

The applicant is one of the administrators of the estate of Karanja Gaturu who was the owner of the land in despite Nyandarua/South Kinangop/66. The applicant has a genuine interest in the said land.

The said suit land has been the subject of protracted litigation in the courts. The last decision is that of Justice Mbogholi delivered on 17/3/2011 in HCC 33/O2 (O/S) in which the court ruled that the subsequent litigation to the decision of the court in RMCC 52/1985, lacked foundation and the orders founded on the said litigation were void *ab initio*. The Respondents herein acted on the application made by the 3rd Interested Party to subdivide the land, based on the decision of Justice

G.B.M Kariuki dated 30/9/05 which Justice Mbogholi has ruled in the latter decision to have been obtained through misrepresentation of facts to the court and was said to be void *ab initio*. Based on the above facts above, I find that the applicant has demonstrated that he has an arguable case that might succeed after the hearing of the Judicial Review application .

I have seen the prayers contained in the Chamber Summons . The subject parcel of land has already been subdivided and registered in the names of the 4th, 6th and 7th interested Parties. So, can an order of prohibition lie?. The court of Appeal considered the efficacy and scope of an order of prohibition in **CA 266/1996, KENYA NATIONAL EXAMINATION COUNCIL VRS REPUBLIC EX P GEOFFREY GITHINJI** to be,.....

“it is an order from the High Court directed to an inferior tribunal or body not to continue proceedings therein in excess of its jurisdiction or in icontravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for departure from the rules of natural justice. It does not however, lie to correct the course, practice or procedure of an inferior tribunal or a wrong decision on the merits of the proceedings”

In the instant case, the 1st respondent has already subdivided the land and titles issued. The 1st Respondent has completed its work. An order of prohibition what is yet to be done or what is ongoing . There is nothing to stop in the instant case.

The applicant also seeks leave to apply for an order of mandamus to compel the 1st respondent to cancel the said titles / subdivisions and recall the titles issued. Can a mandamus lie ? In the same Kenya National Examination Counsel case (supra) the court of appeal exhaustively discussed the circumstances under which an order of mandamus can issue, and quoted Halsbury’s Laws of England 4th Edition Vol 1 page 111 paragraph 89 and 90.

At paragraph 90 the author says:-

“The order must command no more than the party against which the application is made is legally bound to perform , where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute which imposes a duty leaves discretion as to the mode the performing duty in the hand of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way”

The question is, can the Land Registrar cancel or recall titles that he has issued ?. Does he have that statutory duty? The duties of the Land Registrar are set out under section 8 of the Registered Land Act. It does not include any of the functions that the applicant wants him to perform i.e cancellation or recalling of titles . What happens if the Registrar does not?

In my view, the applicant has not moved this court for the appropriate orders and the court will not grant leave in vain. Even if leave were granted no purpose will be served ultimately. For the above reasons I decline to grant leave as prayed. The application is hereby struck out. The applicant to bear his own costs.

DATED AND DELIVERED THIS 21st DAY OF JUNE 2011

**RPV WENDOH
JUDGE**

PRESENT

Ms Sika holding brief for Albert Khaminwa for applicant

Ms Wanjiku for 3rd,4th, 5th 6th & 7th Interested Party

CC: Kennedy Oguma