



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Judicial Review 14 of 2007

REPUBLIC APPLICANT

VS.

THE CHIEF LAND REGISTRAR, MURANG'A1ST RESPONDENT

THE HON. ATTORNEY GENERAL 2ND RESPONDENT

AND

PAUL NDIRANGU MWANGI 1ST INTERESTED PARTY

DANIEL MUHORO MWANGI2ND INTERESTED PARTY

EX-PARTE:

GEOFFREY WANYATURA MWANGI

RULING

This is an application by way of Notice of Motion under Order LIII Rules 1, 2 and 3 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act and the Law Reform Act Cap.26 Laws of Kenya seeking the following orders:

1. An order of Mandamus to compel the Chief Land Registrar, Murang'a to cancel the entries made on parcel No.LOC.3/Mukuria/1047 and LOC.3/Mukuria/1048 on 3rd February 2004 revoking subdivision of new parcel No.1047 and 1048 and registering the land in the joint names of Geoffrey Wanyatura Mwangi, David Kamau Mwangi and Paul Ndirangu Mwangi.
2. An order of Mandamus to compel the Land Registrar, Murang'a to revert to the original registration No.LOC.3/Mukuria/1047 and LOC.3/Mukuria/1048 and revoke all subsequent entries made on the aforesaid properties.

The grounds upon which the orders are sought are as follows:

1. That the interested party obtained orders against the deceased person in the Chief Magistrate's Court sitting in Thika and proceeded to subdivide the property of the deceased and sell the same to the 2nd interested party.
2. That the deceased and applicant were condemned unheard when the Land Registrar acted on an order that was issued without involving the applicant and the deceased.
3. That the Land Registrar acted ultra vires and in bad faith by refusing to reverse the entries

made in the above titles despite there being an order reversing the previous order that he acted upon.

- 4. That the transfer by the Chief Land Registrar of a deceased person's land was done illegally and in excess of jurisdiction, and**
- 5. The Chief Land Registrar, Muranga acted against the rules of natural justice by causing the land of a deceased person to be transferred and/or entries altered in the absence of an administrator.**

There is also an affidavit in support of the application sworn by Geoffrey Wanyatura Mwangi who is the ex-parte applicant.

The learned counsel for the 1st and 2nd respondent has filed grounds of opposition under order 50 rule 16(1) of the Civil Procedure Rules and raised the following points:

- 1. The application is misconceived, bad in law and an abuse of the court process.**
- 2. The application is incompetent and incurably defective.**
- 3. The orders are not sought in the statement**
- 4. The reliefs sought in the statement do not tally with those in the application.**
- 5. Prohibition can only issue to prevent the making of a contemplated decision.**
- 6. Mandamus issues to compel performance of a public duty imposed by statute; and**
- 7. The application has no legal basis hence the prayer that the same be dismissed with costs.**

Both learned counsel have filed written submissions upon which this ruling is based.

The interested parties however, did not file any submissions and if any were filed, then the same have not reached the court record.

The provisions of law cited and the orders sought relate only to procedure and not the merit of the action being challenged and/or sought to be enforced. Judicial review jurisdiction is available where no other legal provisions are provided for or, where there is a specific void which cannot aid an applicant. The ex-parte applicant may have a very good case going by the material before me. However, his cause of action cannot be canvassed under public law jurisdiction because, it is apparent he is claiming ownership of and/or title to land.

That being the case, judicial review is not available to aid him in pursuing his right. In that regard, I agree with the learned counsel for the respondents that, the correct jurisdiction to be invoked in this case is private law. In the case of *Saghani Investment Ltd. vs. The Officer in-charge Nairobi Remand Prison..... Wendo J* had the following to say:

“I do agree with the Respondents that underlying dispute herein is ownership of land. The Judicial Review is not a forum where such dispute can be adjudicated and determined as there would be need for viva voce evidence to be adduced on how the land was acquired and came to be registered in the name of the applicant, whether the title is genuine or not.”

That is a decision of the High Court which is not binding on me, but with respect that is the true position in law.

It is clear that, the issues herein cannot be determined by affidavit evidence. Oral evidence shall be necessary and this dislodges the jurisdiction invoked. I do not deem it necessary therefore to go into the facts and merits of this

dispute because, I have no jurisdiction to go beyond the observation that this matter does not fall within the realms of judicial review.

I am of the view therefore that, the Notice of Motion is misplaced and the same should be dismissed with costs to the respondents.

Orders accordingly.

Dated, signed and delivered at Nairobi this 27th day of January, 2010.

A. MBOGHOLI MSAGHA
JUDGE