



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Miscellaneous 196 of 2008

REPUBLIC.....APPLICANT
VERSUS
PERMANENT SECRETARY OF THE
MINISTRY OF HOUSING.....1ST RESPONDENT
CHIEF LAND REGISTRAR.....2ND RESPONDENT
AND
ELIZABETH CHEPKURUI GOJ &1ST SUBJECT
POUL GOJ.....2ND SUBJECT
ROSE WANGARI KAMAU.....3RD SUBJECT

RULING

This is a Judicial Review application brought under **Order 53 Rule 3** of the **Civil Procedure Rules** and **Sections 8 and 9** of the **Law Reform Act**. It seeks an order of certiorari to quash the administrative decision of the 1st Respondent contained in his letter dated 24th January 2007 offering and or approving for sale the subjects' properties situate in Nakuru and known as **Title Nos. NakuruMunicipality Block 17/ 32 and NakuruMunicipality Block 17/ 34** (the properties). It also seeks orders of prohibition to prohibit the 1st Respondent from selling the properties and the 2nd Respondent from registering and transfer of the properties to interested parties.

The application is based on the ground that as the subjects are the registered proprietors of the properties and the Government having not acquired title to the properties by compulsory acquisition or otherwise the first Respondent has no powers to dispose the subjects' properties.

Upon being served with the application, the Attorney General entered appearance for the Respondents and only filed grounds of opposition in which he averred that this application is not only fatally defective, misconceived and bad in law but it also does not lie and is therefore an abuse of the process of court. He also averred that the application is unmeritorious.

When the application came up for hearing before me on 14th December 2009, though served the AG did not appear to oppose it. In the circumstances, Mr. Kiplenge for the subjects relied on the Skeleton submissions he had filed on behalf of the subjects and asked me to allow the application.

I have perused the application together with the accompanying statement and the verifying affidavits of the subjects filed at the leave stage. It is clear from the annexures to those affidavits, in particular the certificates of official search, that the first and second subjects are jointly registered proprietors of the property known as Title No. Nakuru Municipality Block 17/ 34 having bought it from Solongo Enterprises. The third subject is also the registered proprietor of the other property known as Title No. NakuruMunicipality Block 17/32. The AG having not filed any replying affidavit, there is nothing on record to show that the Government has acquired, by compulsory acquisition or otherwise,

title to either of the properties. In the circumstances, I agree with counsel for the subjects that the 1st Respondent's purported offer to sell the subjects' properties is a violation of their constitutional rights to property and is therefore illegal. Consequently I allow this application as prayed.

DATED and delivered this 2nd day of February, 2010.

D. K. MARAGA

JUDGE.