



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

MISC. CIVIL APPLICATION NO. 97 OF 2010

IN THE MATTER OF AN APPLICATION BY TAMARIND MEADOWS LIMITED FOR
ORDERS OF

MANDAMUS, PROHIBITION AND CERTIORARI

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE REGISTRATION OF TITLES ACT, CAP 281, AND THE POLICE
ACT, CAP 84, LAWS OF KENYA;

ORDER LIII, CIVIL PROCEDURE RULES; THE LAW REFORM ACT, CAP 26 AND THE
JUDICATURE ACT, CAP 8

AND

IN THE MATTER OF LAND REFERENCE NUMBER 337/1642, GRANT NUMBER I.R 71610

BETWEEN

TAMARIND MEADOWS LIMITED.....APPLICANT

VERSUS

THE COMMISSIONER OF POLICE.....1ST RESPONDENT

FESTUS KIAMBI.....2ND RESPONDENT

ATHI FARM LIMITED.....3RD RESPONDENT

ATTORNEY GENERAL.....4TH RESPONDENT

RULING

On 29th April 2010 this court granted leave to the Applicant to apply for judicial review. The orders to be sought were **prohibition, certiorari** and **mandamus**. An order was also sought that such leave do operate as a stay pending disposal of the main application. The court declined to grant *ex-parte* the order of stay and ordered that the prayer for stay be heard *inter partes*. The same was heard *inter partes* on 27th July 2010.

I have considered the submissions of the learned counsels appearing. I have also perused the statement of facts, verifying affidavit and the replying affidavit filed on behalf of the 3rd Respondent. The orders to be sought in the main application are set out in the chamber summons for leave and statement of facts, and are worded as follows;

I. An order of prohibition to prohibit the 1st Respondent through the Officer in-charge Criminal Investigation Department, or the District /Divisional Criminal Investigations Officer acting on his behalf from interfering with the Applicants quiet and peaceful enjoyment of its right to title over Land Reference Number 337/1642 and purporting to adjudicate, delineate and confer a benefit or advantage over the said parcel to the 3rd Respondent or any other person using state resources and without any Judicial powers .

II. An order of prohibition to prohibit the 1st Respondent through the Officer in charge Criminal investigation Department, or the District/Divisional Criminal Investigating Officer Athi River Police Station, or through the 2nd Respondent or any other Police Officer acting on his behalf from proceeding to further issue any order or determine, purport to determine or in any other way deal with any civil dispute related to the parcel known as Land Reference Number 3371642 and or aid the commission of an offence of trespass and forcible entry.

III. An order of certiorari to bring before this honourable court for purposes of quashing the decision of the 1st Respondent acting through the 2nd Respondent to summon the Applicant before the Chief Land Registrar contained in the letter dated 11th March 2010, and all other consequential proceedings and decisions made on that basis.

IV. An order mandamus to compel the 1st Respondent through the Officer in charge Criminal Investigation Department or the District/Divisional Criminal Investigations Officer Athi River Police Station, to carry out its statutory duty under the Police Act, Cap 84 and fully and properly investigate the offence of Trespass and Forcible Entry as reported by the Applicant”.

The Applicant’s main complaint as evidenced by prayers I, II and III is that the police are interfering and taking sides in what is essentially a civil dispute between two citizens over a piece of property. It wants the activity of the police in that regard to be prohibited and quashed.

That notwithstanding, in its intended prayer for an order of mandamus (prayer IV), the Applicant will seek the police to be compelled to carry out their statutory duty under the Police Act, Cap 84 to **“fully and properly investigate the offence of trespass and forcible entry as reported by the Applicant.”**

The material now before the court discloses that the activities of the police complained of by the Applicant were in respect to complaints lodged by the 3rd Respondent against the Applicant in respect to the disputed property. The Applicant’s stand appears to be that the police have taken sides and are unlawfully using their powers to assist the 3rd Respondent to assert its proprietary claims over the disputed property and thereby oust the Applicant’s proprietary claims over the same property. By prayer IV the Applicant acknowledges that the police have a statutory duty to investigate all complaints of a criminal nature that may be lodged with them., including trespass to private land. In these circumstances I do not consider that it would proper or prudent, at this interlocutory stage, to issue any order that might interfere with the police in performance of their statutory duty to investigate crime and maintain law and order. Besides, the court has been informed that there are other proceedings, being Machakos **HCCC No. 47 of 2010**, involving the same main parties and the same property that is pending disposal. That suit is a substantive civil suit which appears to be the proper proceedings in which to

determine the rival claims of the Applicant and the 3rd Respondent to suit property. The court must be wary of making orders that may conflict with orders that may have been made or that may be made in that other suit.

In the circumstance I must decline to order that the leave granted to the Applicant to apply for judicial review do operate as a stay. It is so ordered.

DATED AT MACHAKOS THIS 21ST DAY OF OCTOBER 2010

H. P. G. WAWERU
JUDGE

DELIVERED THIS 22ND DAY OF OCTOBER 2010