



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MISC. CIVIL APPLICATION NO.30 OF 2009

BETWEEN

REPUBLIC.....APPLICANT

AND

THE REGISTRAR OF TITLES-NAIROBI REGISTRY.....1ST RESPONDENT
THE ATTORNEY GENERAL.....2ND RESPONDENT
THE DIRECTOR OF SURVEYS.....3RD RESPONDENT
THE CITY COUNCIL OF NAIROBI.....4TH RESPONDENT
WHITE HORSE INVESTMENT LIMITED.....1ST INTERESTED PARTY
ASTER HOLDINGS LIMITED.....2ND INTERESTED PARTY

EX-PARTE: CAROGET INVESTMENT LIMITED

RULING

The issue that has been placed before me by both learned counsel has caused me some concern. This court delivered its ruling on 29th July, 2010 in respect of the Notice of Motion dated 24th March, 2009.

The learned counsel for the applicant and that of 2nd interested party have drawn two different draft orders in reference to the said ruling. It is the difference in the draft orders that have been referred to me for interpretation. My concern is that, this court having delivered its ruling may, in the course of interpreting the orders presented before it, delve into matters that may result in rewriting the said ruling yet it is *fanctus officio*. I believe however, I can steer clear of the merits or reasons for granting the orders that I did in the said application.

A litigant’s case is premised on the pleadings placed before the court and the prayers thereunder. The Notice of Motion dated 24th March, 2009 set out in clear, concise and unambiguous language the orders sought by the applicant. After hearing the arguments of the parties herein, the court said at page 16 of the ruling as follows;

“Considering all the material that has been placed before me, I am persuaded that the Notice of Motion brought by the applicant herein on 24th March, 2009 must succeed. Having said so, an order of certiorari shall issue forthwith recalling the decision of the 1st respondent dated 20th February, 2009 to this court and thereby quashing it forthwith. The order of prohibition shall issue following such a recall and vacation thereof. And having said so, the order of mandamus would

follow and that the reinstatement follows the orders above.”

The draft by the 2nd interested party herein more or less captures the wording of my ruling. However, it leaves out the details which are contained in the pleadings and in particular the prayers set out in the Notice of Motion dated 24th March, 2009.

If for example one were to read the orders set out by the 2nd interested party independent of the preamble, would one be able to tell which subject matter is involved or what was being prohibited or for what purpose mandamus order was being issued? The obvious answer is no. On the other hand, if one were to read the order as drawn by the applicant, independent of preamble, it is clear the details therein not only capture the pleadings and the prayers set out in Notice of Motion, but also gives the details with particular reference to the subject matter and the impact of the orders sought.

An order is not offensive because it is detailed provided it does not go out of the scope of the pleadings and the prayers sought. Having related the two orders as drawn by the applicant and the 2nd interested party respectively, I am inclined to find that the order as drawn by the applicant captures the pleadings and prayers of Notice of Motion and the tenure and context of my ruling aforesaid. It is conceded however that, Order No.3 as drawn by the applicant is misplaced and should be vacated. With respect, I agree, and therefore I find that the order as drawn by the applicant is the correct order that flows from the pleadings, prayers and my said ruling.

There is no order as to costs. Orders accordingly.

Orders accordingly.

Dated, signed and delivered at Nairobi this 18th day of November, 2010.

A. MBOGHOLI MSAGHA

JUDGE