



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISCELLANEOUS CIVIL APPLICATION 273 OF 2009

IN THE MATTER OF THE PHYSICAL PLANNING ACT, CHAPTER 286,

LAWS OF KENYA

AND

IN THE MATTER OF: THE LOCAL GOVERNMENT ACT CAP 265 LAWS OF KENYA

AND

IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN

REPUBLIC APPLICANT

AND

THE COMMISSIONER OF LANDS 1ST RESPONDENT

THE REGISTRAR OF TITLES, MOMBASA 2ND RESPONDENT

THE MUNICIPAL COUNCIL OF MOMBASA 3RD RESPONDENT

THE DIRECTOR, PHYSICAL PLANNING 4TH RESPONDENT

AND

AMRIT KAUR SAROUP SINGH SAGOO INTERESTED PARTY

AND

- 1. DAPHNE PAULINE BAGSHAW**
- 2. DAVID WALTER HARRIS**
- 3. SUSAN JEAN HARRIS**
- 4. PAUL JULIAN FAY**

5. **ALEXANDRA NATHALIE FUNKE**
6. **GEORGE BAGSHAW**
7. **CAREL WILHEMUS FUNKE**
8. **DAVID MUSILA EX-PARTE APPLICANTS**

RULING

This application for Judicial Review is brought by the eight named ex-parte applicants all of whom are property owners and residents of the Nyali Area of Mombasa City. They seek vide prayers (1) to (5) leave to apply for orders of prohibition directed at four named respondents:

- (i) The Commissioner of Lands
- (ii) The Registrar of Titles Mombasa
- (iii) The Municipal Council of Mombasa
- (iv) The Director, Physical Planning

In addition the ex-parte applicants seek leave to apply for orders of prohibition as against one Amrit Kaur Saroup Singh Sagoo the Interested Party. Finally the eight ex-parte applicants in prayers (6) and (8) of this application seek that the grant of leave do operate as a stay of any approval or implementation including any development, building or construction on LR NO. 3588111MN and/or any change of user over the said property L.R.NO.3588111MN from residential to commercial use pending the hearing and determination of the substantive motion to be filed. Finally in prayer No. (8) the ex-parte applicants seek that costs of the application be costs in the cause.

The basis for this present application is the proposed development and/or construction of a shopping mall and offices on all that parcel of land known as L.R.NO.3588111/MN located in the Nyali suburb of Mombasa city. The ex-parte applicants further allege that any approval granted to this project and the decision to commence construction is ultra vires the law specifically the Physical Planning Act Cap 286 Laws of Kenya.

This court has considered the eight prayers made in the application and has also considered the supporting affidavit of Daphne Bagshaw on behalf of all the applicants as well as the annexures thereto. The court has also read and considered the provisions of the law specifically the Physical Planning Act Cap 286 Laws of Kenya. This court is convinced that the present application has merit in law and as such the court hereby allows the application in terms of prayers (1) to (8) thereof. Costs in the cause.

Dated and delivered at Mombasa this 4th day of June 2009.

M. ODERO

JUDGE

Read in open court

Ms. Ngugi holding brief for Ms. Mango