

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Miscellaneous Civil Application 100 of 2005

JANE WANJA MIANO.....APPLICANT

VERSUS

THE DISTRICT LAND REGISTRAR KIRINYAGA.....DEFENDANT

RULING

The Ex-parte Applicant through Morris Njage & Co. Advocates filed the application for leave to apply for an order of Mandamus on 28/6/2005. The Application was filed under Order 53 Rule 1 (1) of the Civil Procedure Rules. The leave was granted and subsequently the Notice of Motion was filed on 13/7/2005 – under Order LIII Rules 3 (1) of the Civil Procedure Rules. I would like to state and this early stage that both the application for leave and the main notice of motion were incurably defective and should have been struck out. I say so because Order LIII only provides for the procedure in respect to Judicial Review matters. The Substantive Act which gives a party the power, or authority to file an application for Judicial Review is the Law Reform Act and in particular Section 8 and 9 of the Law Reform Act Cap. 26 of the Laws of Kenya. All applications for Judicial Review must therefore be premised on Section 8 and 9 of the Law Reform Act along with Order LIII Civil Procedure Rules which purely provides for the procedure. Both the application for leave and the Notice of Motion therefore ought to have been struck out. That notwithstanding I will proceed to decide this application on its merits. The same seeks an order of mandamus from this court to compel the District Land Registrar Kirinyaga to issue Title Deeds to JANE WANJA MIANO for parcels of land KABARE/NJIKU/1575 and 1576.

The Applicant states that she has complied with the requirements for the issuance of the Title Deeds but according to Mr. Njage, the applicant applied for the issuance of the Title Deed and she complied with all the necessary requirements but the District Land Registrar failed to issue the same. His argument is that since the Land Registrar has a statutory duty to issue Title Deeds, if he fails or refuses to issue the same, then he should be compelled to do so by the court.

Mr. Mugo on the other hand argued that recourse to Judicial Review orders should be taken only when there are no other options or procedures available to a party. I have considered the application before me. I have perused the entire file along with the many annexures to the various affidavits. What comes out clearly is that there is a protracted suit over the parcels of land in question concerning several parties and that would explain why the District Land Registrar has refused to issue the Title Deeds to the ex-parte applicant. I am not however saying that he was right in doing so. He could have explained the position himself if he had filed a replying affidavit which he did not.

The question I must ask myself however is whether there were other procedures which were open and available for the applicant to pursue other than Judicial Review. I have keenly considered Mr. Mugo's argument on this issue. I have made reference to the relevant provisions of the Registered Land Act I agree with Mr. Mugo on this point. The Registered Land Act explicitly and succinctly lays down the procedure to be followed where a Land Registrar fails or refuses to perform his lawful functions under the Registered Land Act.

Section 4 of the Registered Land Act vests the jurisdiction for determining disputes arising from that

Act to the procedures laid out in the Act.

Part XI of Cap 300 spells out the procedure to be followed in solving the disputes where a Registrar fails to perform any of his duties Section 150 (1) R L.A provides as hereunder.

“ If a person is dissatisfied by the refusal of the Deputy Chief Land Registrar, a Land Registrar or an Assistant Land Registrar to effect or cancel any registration, he may, within 30 days of the refusal, appeal in the prescribed form to the Chief Land Registrar, and the Chief Land Registrar may direct that the registration be effected cancelled, as the case may require, or may uphold the refusal.”

It then goes on to prescribe the rest of the procedure as to what should be done by a party who is dissatisfied with the Chief Land Registrar’s decision.

That in my considered view is the route the applicant should have taken. I join issue with the Court of Appeal in its holding in the case of SPEAKER OF THE NATIONAL ASSEMBLY –V- KARUME – where the court held;

“ Where there is a clear procedure for the redress of any particular grievance prescribed by the constitution or an Act of parliament, that procedure should be strictly followed. Order LIII cannot oust clear constitutional and statutory provisions, practical difficulties in getting a particular remedy should not be used as a justification for circumventing the statutory procedure..”

In this case therefore, I agree with Mr. Mugo that Judicial Review was not the best mode of seeking redress more so because it is very restrictive and would shut out interests of other affected parties. Having said so, I must conclude by saying that the notice of motion seeking orders of mandamus must fail. The same is therefore dismissed with costs to the interested party.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 27th day of July 2009

In presence of:-Both counsel.

W. KARANJA

JUDGE