



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MISCELLANEOUS CIVIL APPLICATION 225 OF 2000

**IN THE MATTER OF: AN APPLICATION FOR ORDERS OF
CERTIORARI, PROHIBITION AND**

MANDAMUS

AND

IN THE MATTER OF: THE REGISTERED LAND ACT CAP 300

AND

IN THE MATTER OF: THE LAND (GROUP REPRESENTATIVES) ACT CAP 287

AND

IN THE MATTER OF THE LAND ADJUDICATION ACT CAP 284

REPUBLIC

VERSUS

COMMISSIONER OF LANDS.....1ST RESPONDENT

CHIEF LAND REGISTRAR2ND RESPONDENT

AND

ISANGAIWISHI GROUP RANCHINTERESTED PARTY

EXPARTE APPLICANTS: EDWARD LENJO MUSAMULI

PASCAL SHOLLO

MILTON MASALE MWIWAWI

RICHARD MWABILI

BENARD NDOLE MBAYA

NOBERT LENJO MSHAMBA

R U L I N G

Pursuant to order LIII rules 3 and 4 of the Civil Procedure rules, Edward Lenjo Musamuli with five others took out the motion dated 9th October 2000, in which they prayed for the issuance of judicial review orders in the nature of certiorari, Prohibition and Mandamus. The motion is supported and or verified by the affidavit of Nobert Lenjo Mushamba.

The interested party Isangaiwishi Group Ranch opposed the motion by filing the replying affidavit of Michael Bruno Mwinga Irengi. The Respondents namely the Commissioner of Lands and the Chief Land Registrar did not file any affidavit to oppose the motion but nevertheless they file written submissions to express their objection.

At this juncture, it is important to set out the kind of orders the applicants are seeking. First, the applicants are praying for an order of certiorari to bring into this court for quashing the decision of the Commissioner of Lands (1st Respondent) and the Chief Land Registrar (2nd Respondent) to issue a title deed to the interested party in respect of Plot No. Bura/Isangaiwishi/18. Secondly, the applicants are also seeking for an order of prohibition to prohibit the 1st and 2nd Respondent from releasing the title deed in respect of Bura/Isangaiwishi/18 to the interested party. Thirdly, the applicants are seeking for an order of Mandamus to compel the 1st and 2nd Respondents to resurvey the entire Mwaktau Location and in particular plot No. Bura/Isangaiwishi/18 covering Kwamnengwa, Msorongu and Mwakitau trading Centre and establish a settlement Scheme to the benefit of the applicants and members of Shinga clan. The main ground relied upon by the applicants is that the respondent issued the title deed irregularly, unlawfully and contrary to public policy and practice. It is alleged that the applicants and members of Shinga clan were deliberately excluded and were not heard prior to the formation of the interested party, the ranch established thereof and the plot no. Bura/Isangaiwishi/18.

A careful perusal of the motion and the accompanying statement will reveal that title has already been issued in respect of Plot No. Bura/Isangaiwishi/18 under the provisions of the Registered Land Act. There is no submission that the Respondents did not have the authority to issue the title deed. There is evidence that objections were raised, heard and determined before the title were issued. Even if the Respondents did not hear the applicants, a decision to issue the title has been made and implemented. An order of certiorari cannot be issued therefore because the decision has been made and effected. In any case there are elaborate procedures to defeat such a title under the Registered Land Act. The remedy available to the applicants is by private law and not by public law. In view of my decision, it is obvious that the orders of prohibition and mandamus are not issuable. In the end I dismiss the motion with costs to the interested party and the Respondents.

Dated and delivered at Mombasa this 28th day of March 2008.

J.K. SERGON

J U D G E

In open court in the presence of Mr. Gikandi for the Applicants.

N/A for Respondent

N/A for Interested party