



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Misc Cause 299 of 2003

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
ORDERS OF MANDAMUS, CERTIORARI AND PROHIBITION**

AND

**IN THE MATTER OF SECTION 33 OF THE REGISTERED LAND ACT CAP 300 LAWS OF
KENYA**

AND

IN THE MATTER OF L.R. NO. MERU TOWN BLOCK 11/51

BETWEEN

JOEL MURIUKI 1ST APPLICANT

MOSES KITHINJI 2ND APPLICANT

JULIUS KINOTI 3RD APPLICANT

NKANATA MANYARA 4TH APPLICANT

AND

FREDRICK M'ITHINJI 1ST RESPONDENT

JOSEPHAT KIRIGIA 2ND RESPONDENT

CHIEF LAND REGISTRAR 3RD RESPONDENT

JUDGMENT

The application for judicial review dated 8th April 2005 seeks three orders namely:

- (1) An order of certiorari to issue to remove to this court for the purpose of being quashed the decision of third respondent to register the 1st and 2nd respondents as properties of LR NO MERU Town Block

11/51 before the expiry of the 30 days notice given to lodge objectors published in the Kenya Gazette of 20th December, 2002

(2) An order of mandamus to compel the 3rd respondent to correct the entries made over Title LR Meru Town Block 11/51 on 20th December, 2002 and to cancel the certificate of title issued to the 1st and 2nd respondents

(3) An order of prohibition to prohibit the 1st and 2nd Respondents from dealing in any manner whatsoever with LR Municipality block 11/51 pending hearing and final determination of case no 112 of 1996 at Meru High Court.

A perusal of the Statement Verifying Affidavit and Replying Affidavits skeleton arguments filed by the parties and the oral submissions of Counsel, all of which I have taken into consideration bring the following critical points:

(1) That pursuant to s 33 of the Registered Land Act Cap 300 under which less property which is less subject of this matter falls, the Land Registrar published a 30 days Notice inviting objections to the proposed transfer of LR Meru Town Block 11/51 to the Respondents 1 and 2. The notice was published on 20th December 2002. However on the same day the Land Registrar did in fact register the transfer before the expiry of the notice period.

(2) Prior to the registration of the challenged transfer the property had been registered in the name of a limited liability Company M/s Meru Bakers Ltd

(3) In HCCC 165 of 2001 at Meru the 1st and 2nd Respondents had sued the Company among others and the 3rd Respondent. In registering the transfer the Land Registrar had acted pursuant to the Court order issued in the case. In connection with the order obtained there is a pending appeal in the Court of Appeal at Nyeri namely CA 16/2003

(4) The property in question is also the subject matter of HCC 112/1996 and CA Nai 377/96 where some orders have been made

(5) The applicants had no interest in ownership of the property in question except that they were directors/shareholders in the former proprietor, Meru Bakers Ltd

From the above points which have not been denied and constitute common ground it is as clear as day, that the challenged decision does to a large extent merge in the decisions and orders obtained in the High Court and the Court of Appeal as set out above. Purporting to seek judicial review orders directed at High Court orders or for that matter by extension to Court of Appeal is the height of incompetency and unconstitutionality. Constitutional Judicial Review is only available as against the subordinate court under s 65(2) of the Constitution. The High Court which has the statutory jurisdiction in judicial review under the Law Reform Act and Constitutional judicial review under s 65(2) over subordinate courts only has additional jurisdiction over additional subordinate Courts, Tribunals and public authorities as well. Indeed, my learned brothers and colleagues may be as wrong as sin but their decision can only be challenged on appeal. On this ground alone the application is wholly incompetent and the application ought to be dismissed. The other way of describing the situation is that this application is an abuse of the court process and the court would not countenance it even for a minute.

I should also add that apart from the above, the application was also destined to fail for three secondary reasons:

(1) for lack of standing or locus. The challengers had no interest in the property in question

(2) The Registered Land Act incorporates Statutory remedies and it would be against the law and public policy for this court to intervene

(3) The application for judicial review was not made in the name of the Republic. The orders of certiorari, prohibition and mandamus are at the end of the day discretionary and are issued in the name of the Republic. The applicant did not properly move the court.

In the result the application is dismissed with costs to the Respondents.

It is so ordered.

DATED and delivered at Nairobi this 15th day of December, 2006.

J.G. NYAMU

JUDGE