



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MISC. APPLICATION NO. 920 OF 2003**

**IN THE MATTER OF: AN APPLICATION BY GRACE WAITHIRA  
NJENGA FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI**

**IN THE MATTER OF: DISTRICT REGISTRAR KIAMBU AND  
SECTION 21 OF THE REGISTERED LAND ACT, CAP 300 OF THE**

**LAWS OF KENYA**

**REPUBLIC .....APPLICANT**

**VERSUS**

**DISTRICT LAND REGISTRAR KIAMBU ..... RESPONDENT**

**JUDGMENT**

By its Notice of Motion of the 9th September 2003 the Applicant seeks the following orders:

**AN ORDER OF CERTIORARI** to remove into the High Court for quashing the decision of the District Land Registrar, Kiambu made on 24th July, 2003 in boundary dispute determination creating an access road of 15 feet width over the applicant's land reference number Kiambaa/Kihara/2838 when none exists."

The Applicants have filed a Statutory Statement and Affidavit in support of the Chamber Summons. Order 53 rule 1(2) states as follows:

"An application for such leave as aforesaid shall be made ex-parte to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by a affidavit verifying the facts relied on. The judge may in, granting leave, impose such terms as to costs and as to giving security as he thinks fit."

The affidavit sworn by the Applicant merely states that she has read the statements filed with the application and that the facts set out therein are true and she verifies the same

In the case of KRA V. Owaki C.A. No.45 of 2000 the Learned Court of Appeal in a joint Judgment stated as follows:

"We would observe that it is the verifying affidavit not the statement to be verified, which is of evidential value in an application for Judicial Review. What appears to be the meaning of rule 1(2) of the order LIII. This position is confirmed by the following

passage from the Supreme Court Practice 1976 Vol. 1 at paragraph 53/1/7.

“The application for leave “By a statement”. The facts relied on should be stated in the affidavit (see R.V. Wandsworth JJ, ex. P. Read [1942] 1K.B. 281) “The statement should contain nothing more than the name and the description of the applicant, the relief sought. It is not correct to lodge a statement of all the facts, verified by an affidavit”

. For this reason the Application is defective and I strike it out.

If I am wrong I will deal with the facts

. The Applicant complains that the District Land Registrar Kiambu exceeded his powers in a dispute relating to an access road and for an order of certiorari to quash his decision to alter the boundary to the Applicants land known as Kiambaa/Kihara/2838.

There now exists due to the subdivision of a piece of land known as Kiambaa/Kihara/179, three pieces of land known as 1485, 1486, and 1487 which the applicant subsequently had consolidated into her present premises.

The cadastral plan annexed to the affidavit of the interested party shows that contiguous with the boundary line of the three subdivided plots referred to above was a road reserve.

It appears that when the Applicant obtained her consolidated title to the three sub-divisions the road reserve was not taken into account. The question arises does the Registrar have power to alter the boundaries of the Applicant’s land to recreate the road reserve which she appears to have absorbed into her land.

Section 21(2) of the Registered Land Act (The Act) states as follows

“Where any uncertainty or Dispute arise as to the position of any boundary, the Registrar, on the application of any interested party, shall, on such evidence as the Registrar considers relevant, determine and indicate the position of the uncertain or disputed boundary.”

This sub-section permits the Registrar to determine and indicate the position of an uncertain or disputed boundary. It is not clear however on what basis the Applicants boundary was fixed.

Under section 28 of the Act the rights of a proprietor shall not be liable to be defeated and shall be held by the proprietor subject to (b) inter alia to such liabilities rights and interests as affect the same and are disclosed by section 30.

Under section 30 of the Act all registered Land is subject to

“(a) rights of way, rights of water and profits subsisting at the time of first registration under the Act”

If the right of way existed at the time of first registration of the Applicant’s title, then the Applicant has taken the land subject to the right of way.

In the result and having dismissed the Application I award the costs to the Respondent and interested party

**Dated and delivered at Nairobi this 6th day of June, 2004**

**P.J. RANSLEY**

**JUDGE**