REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
H.C.MISC. APP. CASE NO.673 OF 2002

HANNAH MBURU KIARIE ……..……. APPLICANT

VERSUS

THE LAND REGISTRAR & OTHERS ……. RESPONDENTS

RULING

The 2nd 4th and 5th Defendants raised three preliminary points.

Firstly they submitted that the Application before the Court is in the wrong format and does not comply with the directions as to the form of an application for Judicial Review set out in the case of Farmers Bus Services and Other versus the Transport Licensing Appeal Tribunal {1959} E.A P.779 in which Forbes Ag. P. Cited with approval a passage in the Judgment of Sir Newnham Worley P.M. the case of Mohamed Ahmed V R in which he stated

> "Mr. Few (a Crown Counsel) is recorded as having appeared for "the respondent" This recital reveals a series of muddles and errors which is not unique in Uganda and is attributable to laxity in practitioners' office and in some registries of the High Court. The appellant's advocate appears to have failed entirely to realize that prerogative orders, like the old prerogative writs, are issued in the name of the Crown at the instance of the applicant and are directed to the person or persons who are to comply therewith. Applications for such orders must be intituled and served accordingly. The Crown cannot be both applicant and respondent in the same matter"

In the present application the Republic is said to be the Plaintiff. The Defendants include not only persons whom relief is sought against namely the 1st, 2nd and 3rd Defendants but two persons namely the 4th and 5th Defendant against whom no relief is sought. The applicants are referred to as interested parties where as the 4th and 5th Defendants should be named as interested parties. To use the words of Sir Newham Worley P. The heading is a muddle but is it fatal. The proceedings having been brought in the name of the Republic the missioner of the other parties does not vitiate the proceedings in my view and the heading can be amended without injustice. Secondly the Applicant failed to attach the decision complained of by the Registrar of Title to the application in contravention of section O.53 rule 7. The decision attacked is by the District Land Registrar and is dated the 6th June 2002.

The chamber Summons of the 14th June, 2002 seeking an application for Judicial Review seeks as the first order an order in the following terms:

> 1. "This Court Honourable be pleased to grant leave to the applicant Hannah Mbura Kiarie to apply for Orders of Certiorari for the Land Registrar Nairobi Rosemary Ngonga to be ordered to bring up into this Honourable Court in Order to be quashed her decision ruling to demarcate or to approve a plan to survey a road through the Applicant's land formerly known as land Parcel No.DAGORETTI/RIRUTA/970 but which has since been subdivided into Land Parcels No. DAGORETTI/RIRUTA 3247,3248 3249, 3250 and 3251."

It is clear that the Interested party as she call herself knew that there was a decision of the Land Registrar Nairobi. There is however no explanation as to why this decision was not attached to the application. In my view it is essential that the decision should be before the court but if for reasons to be explained on it is not available, then this should be dealt with in the application. In my view the absence of the decision is fatal to the application and on this ground I dismiss the application in limine with costs to the Defendants.

Dated and delivered at Nairobi 12th day of February, 2003

P.J. RANSLEY

JUDGE