



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC MISC APPLICATION (JR) NO. 48 OF 2018

IN THE MATTE ROF AN APPLICATION BY PHILIP TUMPEINI SAIYUAH,

JOSEPH KUYAN AND BENJAMIN LEMASEI TUMPES FOR THE

JUDICIAL REVIEW ORDER OF MANDAMUS

AND

IN THE MATTER OF THE LAND REGISTRATION ACT (NO.3 OF 2012) THE LAND ACT NO.6 OF 2012)

FAIR ADMINISTRATIVE ACT, 2015 AND ARTICLE 47 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTE ROF THE DECISION AND/OR REFUSAL BY THE CHIEF LAND REGISTRAR

AND REGISTRAR OF TITLES TO REGISTER PHILIP TUMPEINE SAIYUNI JOSEPH KUYAN

AND BENJAMIN LEMASEI TUMPES AS THE PROPRIETORS TO THE PARCEL OF

LAND KNOWN AS L.R NO. 209/14069 MEASURING APPROXIMATELY 1000 HA

-BETWEEN-

REPUBLIC.....APPLICANT

-VERSUS-

CHIEF LAND REGISTRAR.....1ST RESPONDENT

REGISTRAR OF TITLES.....2ND RESPONDENT

EX-PARTE: PHILIP TUMPEINI SAIYUAH

JOSEPH KUYAN

BENJAMIN LEMASEI TUMPES

-AND-

ZAF HOLDING LIMITED.....APLICANT/PROPOSED INTERESTED PARTY

RULING

1. This is a Ruling in respect of a notice of motion dated 17th October 2018 which seeks to enjoin the Applicant in these proceedings as an

interested party. The Ex-Parte Applicants had filed a Judicial Review Application for an order of mandamus to issue compelling the Chief Land Registrar and the Registrar of Titles to register them as owners of LR No. 209/14069(suit property).

2. The Ex-Parte Applicants who are the Respondents in this application allege that they were allotted the suit property vide allotment letter dated 6th January 1995, a lease was prepared in their favour but when they lodged their documents for registration, the Chief Land Registrar and Registrar of Titles have refused to register them as owners of the suit property. It is on this basis that they sought for an order of mandamus directing the Chief Land Registrar and Registrar of Titles to register them as owners of the suit property.

3. When the Applicant became aware of the application by the Respondents, the Applicant moved to court seeking to be enjoined in these proceedings as an interested party so as to enable the court make a determination in this matter. The Applicants contends that it is the registered owner of the suit property and that if the court were to proceed to compel the Chief Land Registrar and the Registrar of Titles to register the Respondents as owners of the suit property, it will amount to double allocation.

4. The Applicant contends that the suit property has been subjected to attempted fraudulent acquisition before and that the Respondents are trying to take the suit property through fraudulent means.

5. The Respondents have opposed the Applicant's application based on a replying affidavit sworn on 17th December 2018. The Respondents contend that joinder of the Applicant in these proceedings will not add any value as what the Respondents are seeking to achieve does not require the court to inquire as to who has genuine title or not. The Respondents contend that they are simply asking for a process which is fair and expeditious.

6. The Respondents contend that what the Applicant is raising can only be ventilated through a suit filed in the normal way where evidence of who has a genuine title can be argued. The Respondents contend that the title which the Applicant claims to have cannot be traced at the lands office and that if the Applicant has any claim to the suit property, let it file a suit which the Respondents can defend in court but not joining these proceedings where the validity of its title cannot be interrogated.

7. I have carefully considered the Application by the Applicant and the opposition to the same by the Respondents. The only issue for determination herein is whether the Applicant should be enjoined in these proceedings as an interested party. There is no doubt that the Applicant is the current registered owner of the suit property. This property was transferred to the Applicant on 30th December 2009. The original allottee was Shimaba Tourist Service Ltd. The suit property, was then transferred to Bigster Trading Company before it was finally transferred to the Applicant.

8. This being the case, the Applicant has demonstrated that it has interest in the matter and hence a necessary party in this matter. I am aware that in judicial review proceedings, the question as to who has a genuine title or not cannot be entertained but in the circumstances of this case, it is necessary for the Applicant to be brought on board in these proceedings.

9. The Chief Land Registrar and the Registrar of Titles had been served with the application for judicial review but they did not file any response despite them being served. In **Republic Vs Salaries and Remuneration Commission Ex-parte Parliamentary Service Commission & 4 Others (2018) eKLR**, Justice Odunga discussed instances where a party can be allowed as an interested party in Judicial Review proceedings. One such instance is when it shown that the Applicant's interest cannot be safeguarded by the Respondent.

10. In the instance case, the Attorney General who is supposed to appear for the Respondents has not appeared in these proceedings. It is the Attorney General who would have shown the direction of this kind of application filed by the Respondents because the offices sued are the custodians of the records pertaining to the suit property. As the Attorney General has not entered any appearance in this matter, it is necessary that the Applicant be allowed in these proceedings.

11. The Applicant is not coming to these proceedings to change the character of the proceedings. The addition of the Applicant will assist the court to make an informed decision as to whether this is a suitable case for grant of orders of mandamus or not. Besides this, the Applicant has demonstrated that it has sufficient interest in this matter. I therefore allow the application. The Applicant is hereby enjoined as an interested party. The Applicant is allowed to file pleadings in answer to the Respondents' Notice of motion for an order of mandamus together with submissions within 14 days.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 18TH DAY OF FEBRUARY 2021

E.O.OBAGA

JUDGE

In the Virtual presence of:-

Mr Arusei for Ex-Parte Applicants

Mr Achoki for Proposed Interested Party

Court Assistant: John

E.O.OBAGA

JUDGE