



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

MISC. CIVIL APPLICATION NO.293 OF 2001

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO
INSTITUTE JUDICIAL REVIEW
PROCEEDINGS BY MOHAMED
SHEIKH ABUBAKER.**

AND

**IN THE MATTER OF: THE MOMBASA CHIEF
MAGISTRATE'S COURT CIVIL CASE
NO. 1432 OF 1998 BETWEEN
MOHAMED SHEIKH ABUBAKER –
VERSUS – ZAKARIUS MWERIA**

BAYA

AND

IN THE MATTER OF: L.R.5054/1463 KILIFI

REPUBLIC APPLICANT

VERSUS

THE COMMISSIONER OF LANDS RESPONDENT

AND

ZAKARIUS MWERI BAYA INTERESTED PARTY

JUDGMENT

This is an application for Judicial Review by Notice of Motion. Leave has already been granted by this court as required under Order 53 Civil Procedure Rules. The application is supported by affidavit and statement as required by rules of procedure.

The orders sought are for issue of certiorari to bring to High Court and to quash the decision and proceedings of the Commissioner of Lands allocating a portion of land known as Plot No.5054/1463 Kilifi to the interested party and that mandamus issue to command the Commissioner of Lands to restore the portion allocated to interested party to the Applicant. The statement filed shows that the Applicant is the owner i.e. registered proprietor of all that piece of land known as No.5053/1463 Kilifi registered under the provisions of Registration of Titles Act Cap 281 laws of Kenya. A grant Number CR 33256 shows the applicant's interest being a term of 99 years from 1.11.1996. A deed plan is also indicated – being No.217008 made and dated the 28/4/1998 which shows the dimensions, abuttal and boundaries of the Plot No.50531463. On 21/6/2001 the Commissioner of Lands issued an allotment letter to the

interested party, ZACCARIUS MWERI BAYA, offered a plot in the plan No.134 KLF 6.2001 measuring 0.16 hectares for a term of 99 years from 1.7.2001. It is also shown that it was within the knowledge of Commissioner of Lands that the allocation was within Plot No.5054/1463 already allocated. Nevertheless the Commissioner of Lands embarked upon and proceeded to curve out the Applicant's land in order to issue a portion to the interested party. The respondent and interested party have been served but none appeared or filed any affidavits.

In the circumstances of the disclosed material I am convinced that the Respondent Commissioner of Lands had no authority at all to allocate land which had already been allocated to another person. He has no authority to interfere either with the terms of the grant or the boundaries as shown in the Deed Plan. The applicant has acquired indefeasible title protected by Government under Section 23 of Registration of Titles Act. His action in allocating the land to the interested party is ultra vires his powers which are strictly given under Registration of Titles Act Cap. 281. The Commissioner of Lands did not even notify the Applicant that he intended to curve out a portion of his land for the benefit of the interested party. I therefore grant the orders sought. The application is allowed with costs.

Dated at Mombasa this 20th Day of March, 2 002.

J. KHAMINWA

COMMISSIONER OF ASSIZE

Delivered in the presence of:

Mr. Khatib for Applicants. For Respondents.

..... For interested party.

J. KHAMINWA

COMMISSIONER OF ASSIZE