



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC JR MISC APP NO 30 OF 2019**

**IN THE MATTER OF AN APPLICATION BY GATITU BUILDING COMPANY LIMITED FOR LEAVE TO APPLY FOR ORDERS OF MANDAMUS**

**AND**

**IN THE MATTER OF THE LAND REGISTRATION ACT NO 3 OF 2012**

**AND**

**IN THE MATTER OF NATIONAL LAND COMMISISON ACT NO 5 OF 2012**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE NATIONAL LAND COMMISISON.....1<sup>ST</sup> RESPONDENT**

**THE CHIEF LAND REGISTRAR.....2<sup>ND</sup> RESPONDENT**

**THE CABINET SECRETARY LANDS.....3<sup>RD</sup> RESPONDENT**

**EXPARTE.....GATITU BUILDING COMPANY LIMITED**

**RULING**

1. This is the Chamber Summons dated 19<sup>th</sup> June 2019 and Amended on 30<sup>th</sup> January 2020. It is brought under order 53 rules 1(1), 1 (2) and 1(4) of the Civil Procedure Rules, 2010 Section 1A, 1B and 3A of the Civil Procedure Act, Article 159 (2) and all other enabling provisions of the law.

2. It seeks orders:-

**1. That leave be granted to institute judicial review proceedings seeking:-**

**(a) An order of mandamus be issued by this honourable court to compel the respondents to issue the applicant with a land title in respect to the property known as LR No 209/8363/41 situated within Nairobi County.**

**(b) That the costs of this application be provided for.**

3. The grounds are:-

**1. The exparte applicant is the proprietor of that property known as LR No. 209/8363/41 by virtue of an agreement for sale dated 8<sup>th</sup> October 1997 and a deed plan issued by the lands office on 30<sup>th</sup> June 1983.**

**2. That the Ex-parte applicant is the bonafide purchaser for value and proprietor of the property known as LR No 209/8363/41 who has been in possession of the said property for over thirty (30) years and has put up multiple residential dwelling units on the property.**

**3. That the Ex-parte Applicant runs a hotel business on the said property known as LR No. 209/8363/41 and has been in possession of the same for over thirty (30) years.**

**4. That the property known as LR No. 209/8363/41 is a subdivision of LR No 209/8363 whose title was not issued to the ex-parte applicant before the mother title expired.**

**5. That the exparte applicant has been denied a title to their property known as LR No 209/8363/41 by the respondent because the duration of the mother title LR NO 209/8363 has lapsed.**

**6. That the mother title known as LR No 209/8363 is lease for a duration of thirty six (36) years and six (6) months issued in 1974 whose term lapsed and could not be extended in time because the original proprietors are all deceased.**

**7. That the original proprietors o LR No.209/8363 John Kagai Gachenga, William Kyengo Mwangangi and Sophia Nyokabi Mathu are all deceased hence there is no one available and alive to apply for extension of the lease to the mother title.**

**8. That the Ex-parte applicant has been denied the right to fair administrative action and denied the right to property.**

4. The application is supported by the verifying affidavit of Stephen Minae Gate a director of the Ex-parte applicant sworn on the 30<sup>th</sup> January 2020. The application is also supported by the statement of facts dated 30<sup>th</sup> January 2020.

5. The 1<sup>st</sup> respondent was duly served with the initial chamber summons. It entered appearance on 2<sup>nd</sup> September 2019 and filed grounds of opposition dated 30<sup>th</sup> August 2019 and filed on 2<sup>nd</sup> September 2019. When Mr. Wambugu appeared in court on 17<sup>th</sup> February 2020, he informed the court that the 1<sup>st</sup> respondent would no longer participate in this matter.

6. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents were duly served with the amended chamber summons. There is an affidavit of service sworn by Clement Ogotu Owende on the 2<sup>nd</sup> February 2020. Despite being served, they neglected and/or failed to file any responses.

7. **Section 23(2)** of the Land Act, No 6 2012, as amended by the statute law (Miscellaneous Amendments) Act, 2018 provides that:-

**“A lease or licence for private land within the meaning of Article 64(b) of the Constitution shall be issued by the cabinet secretary and registered by the Chief Land Registrar”.**

8. As stated earlier the 2<sup>nd</sup> and 3<sup>rd</sup> respondents have not filed any responses. The application is therefore unopposed.

9. I find merit in this application and do grant the orders sought namely.

**a) That an order of mandamus is hereby issued compelling the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to issue the applicant with a title in respect to the property known as LR NO 209/8363/41 situated within Nairobi County.**

**b) That costs of this application be borne by the applicant.**

It is so ordered.

**Dated, signed and delivered in Nairobi on this 18<sup>th</sup> day of March 2021.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Mr. Masinde for Mr. Mungai for Ex-parte Applicant

No appearance for the Respondents

Phyllis - Court Assistant