



Lyne Apartments Limited v Wakaba & 2 others (Environment and Land Judicial Review Case 6'B' of 2022) [2024] KEELC 3582 (KLR) (9 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3582 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 6'B' OF 2022**

JG KEMEI, J

APRIL 9, 2024

**IN THE MATTER OF AN APPLICATION BY LYNE APARTMENTS LIMITED
FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI AND MANDAMUS**

AND

**IN THE MATTER OF: ARTICLE 165(3) (A) OF THE
CONSTITUTION OF KENYA LAWS OF KENYA**

AND

IN THE MATTER OF: THE REGISTERED LAND ACT, CAP 300 LAWS OF KENYA

AND

**IN THE MATTER OF: THE REGISTRATION OF
TITLES ACT, CAP 281 OF THE LAWS OF KENYA**

BETWEEN

LYNE APARTMENTS LIMITED APPLICANT

AND

WAMBUI MWAGO WAKABA 1ST RESPONDENT

THE RUIRU LAND REGISTRAR 2ND RESPONDENT

THE HON ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. On 26/9/2022 the Exparte Applicant moved the Court by way of Chamber Summons seeking orders as follows:-
 - a. That this application be certified as urgent and heard on an exparte basis for the reasons of urgency stated in the certificate herein.



- b. That the Applicant Lyne Apartments Limited be granted leave to apply for an order of certiorari to remove and bring into this Honourable Court for purposes of quashing the decision of the Chief Land Registrar / Registrar of Titles dated 23rd June 1994 issuing Provisional Certificate of Title for parcel of land known as Ruiru/Ruiru East Block 4/90 to the 1st Respondent.
 - c. That the Applicant, Lyne Apartments Limited be granted leave to apply for an Order of Mandamus compelling the 2nd Respondent, whether by itself, its agents, workers or servants to recall and cancel and/or 4/90 issued to the 1st Respondent.
 - d. That such further or other reliefs as this Honourable Court may deem fit, just and expedient to grant.
 - e. That the costs of this application be in the cause.
2. The application is premised on the grounds set out therein and the Verifying Affidavit of Mercy Waitherero Gachoya, who deponed that this Court has jurisdiction to supervise and oversee the Judicial discretion and proceedings by administration bodies and independent bodies like the Respondents. She averred that the Exparte Applicant is the registered owner of the suit land having acquired it for value from Bilha Wanjiku Muya at the sum of Kshs. 1, 400,000/- in 2013 whereupon it took possession of the premises.
 3. She avowed that in March 2022 the 1st Respondent approached the area Chief purporting to be the owner of the land without providing any documentary evidence in support of the allegation. On 18/3/2022 the Exparte Applicant sought the documents of registration of the suit land such as green card and a copy of the alleged duplicate file which the Land Registrar duly obliged and issued her with green card in the name of the 1st Respondent. It is the Exparte Applicant's case that it expected the Land Registrar to give a reason for the duplicity of the titles hence this application. That unless the Respondent and its officers are compelled to revoke and cancel the duplicate title issued to other individuals the Applicant is at risk of losing its property.
 4. The 2nd and 3rd Respondents opposed the application vide the Preliminary Objection dated 23/11/2022 expressed in the following terms:-
 - a. That the entire suit offends Order 53 rule 2 of the *Civil Procedure Rules, 2010*.
 - b. That the entire suit is frivolous, vexatious and a waste of the Court's Judicious time.
 - c. That the entire suit is an abuse of Court process.
 5. On 20/4/2023 directions were taken to canvas the Judicial Review through written submissions. The 2nd and 3rd Respondents complied with the directions. I have read and considered the written submissions.
 6. The key issue is whether the Preliminary Objection is merited.
 7. It is noteworthy from the record that the Exparte Applicant acquired the land on 2/5/2013. Unchallenged evidence has been led that the Exparte Applicant sought the details of the duplicated title in March 2013. Save being given the copy of the green card, the Exparte Applicant is aggrieved that no explanation was forthcoming from the Land Registrar on the state of affairs of the title having been duplicated.



8. Order 53 (2) of the Civil Procedure Rules provides as follows:-

“Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”

9. Section 9(3) of the Law Reform Act provides as follows:-

“In the case of an application for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree, conviction or other proceeding or such shorter period as may be prescribed under any written law; and where that judgment, order, decree, conviction or other proceeding is subject to appeal, and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”

10. Reason for seeking leave is explained in the case of Uwe Meixner & Another v Attorney General [2005]eKLR as follows:-

“The leave of the court is a prerequisite to making a substantive application for judicial review. The purpose of the leave is to filter out frivolous applications. The granting of leave or otherwise involves an exercise of judicial discretion.”

11. It therefore follows that leave ought to have been sought within 6 months that is by the month of September 2013. This application being filed on 26/9/2022 comes about eight (8) years later. The Court finds that it is time barred and therefore the Court has no jurisdiction to grant any leave to bring judicial review proceedings to quash the decision of the Land Registrar.

12. Consequently, the Preliminary Objection is merited. It is upheld. The suit herein is hereby dismissed.

13. The costs shall be payable by the Exparte Applicant to the 2nd and 3rd Respondents.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 9TH DAY OF APRIL, 2024
VIA MICROSOFT TEAMS.**

J G KEMEI

JUDGE

Delivered online in the presence of;

Wangari HB Gachie Mwanza for the Applicant

1st, 2nd and 3rd Respondents – Absent

Court Assistants – Phyllis/Oliver

