



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

JR MISC APP NO. 5 OF 2020

IN THE MATTER OF: AN APPLICATION BY FEIZAL SADRUDIN NURANI AND FARAH SADRUDIN NURANI (As Administrators of the Estate of the Late SADRUDIN SHAMSUDIN NURANI) FOR LEAVE TO APPLY FOR AN ORDER OF MANDAMUS

AND

IN THE MATTER OF: ARTICLE 68(C) OF THE CONSTITUTION OF KENYA 2020

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE CHIEF LAND REGISTRAR MINISTRY OF LANDS..1ST RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....2ND RESPONDENT

AND

FEIZAL SADRUDIN NURANI & FARAH SADRUDIN NURANI

(As Administrators of the Estate of the Late

SADRUDIN SHAMSUDIN NURANI).....EX PARTE APPLICANTS

RULING

1. By this Chambers Summons application dated 28th September 2020 initially filed in the Judicial Review Division at Nairobi as JR Misc Application No. E045 of 2020, Feizal Sadrudin Nurani and Farah Sadrudin Nurani suing as the Administrators of the Estate of the Late Sadrudin Shamsudin Nurani (the Ex- Parte Applicants) pray that they be granted an order of mandamus directed to the two Respondents, the Chief Land Registrar at the Ministry of Lands and the Honourable the Attorney General to revoke the title issued to Glitter Venture Company Ltd. In addition, the Ex-Parte Applicants require the two Respondents to regularize the title held by the Estate of the said Sadrudin Shamsudin Nurani and Ramesh Lali Aggarwal as per the directions of the National Land Commission dated 17th July 2017 issued vide Gazette Notice No. 6866.

2. The Summons supported by a Statement of Defence of Facts dated the same day and a Verifying Affidavit sworn by Feizal Sadrudin Nurani is premised on the grounds: -

a) That on 17th July 2017 vide Gazette Notice No. 6866, the National Land Commission issued an award and determination directing the Chief Land Registrar to revoke the title for Glitter Venture Company Ltd and to regularize the title held by the Estate and Ramesh Lali Aggranal.

b) That the award and determination also directed the Chief Land Registrar to proceed to undertake any transactions against the title as may be required by the title holder;

c) That to-date and despite numerous requests and applications by the Ex-Parte applicants, the orders and determination of the Commission has never been effected;

d) That the Chief Land Registrar by virtue of Section 14 of the National Land Commission Act is under a legal duty to revoke the title as is directed by the National Land Commission; and

e) That the continued failure to act on the orders and determination of the Commission is tantamount to a dereliction of a legal duty.

3. When the matter was first filed and placed before the Honourable Justice Pauline Nyamweya at the Judicial Review Division of the High Court at Nairobi, the Learned Judge determined that the dispute and orders sought were in relation to title, use and occupation of land and proceeded to direct on 30th September 2020 that the file be transferred to the Environment and Land Court at Nairobi for hearing and disposal.

4. Subsequently, on 5th October 2020, the file was placed before the Honourable Justice Samson Okong'o Principal Judge of this Court who upon perusal thereof determined that the matter be transferred to Malindi as the subject matter was situated within Kilifi County.

5. Order 53 Rule 1 of the Civil Procedure Rules provides that no application for Judicial review orders should be made unless leave of the Court was sought and granted. The reasons for the grant of leave was explained by Waki J. (as he then was) in **Republic –vs- County Council of Kwale & Another Ex-Parte Kondo & 57 Others –Mombasa HCMA No. 384 of 1996** as follows:

“The purpose of application for leave to apply for Judicial review is firstly to eliminate at an early stage any applications for Judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration. The requirement that leave must be obtained before making an application for Judicial review is designed to prevent the time of the Court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for Judicial review of it were actually pending even though misconceived. Leave may only be granted therefore if on the material available the Court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the applicant the test being whether there is a case fit for further investigation at a full inter partes hearing of the substantive application for Judicial review. It is an exercise of the Court’s discretion but as always it has to be exercised judicially.”

6. Order 53 Rule 1 (2) of the Rules provides that: -

“An application for such leave as aforesaid shall be made Ex-parte to a Judge in Chambers, and shall be accompanied by a Statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on.”

7. Arising from the history of dispute herein and given that leave was not granted in the Nairobi Court where the leave was first sought, this Court took the liberty to require the Ex-parte Applicant to serve the Respondent Ministry of Lands and the Honourable the Attorney General with the application for leave. The Respondents did not file anything in response thereto.

8. The Ex-parte Applicants herein seek to enforce a decision of the National Land Commission, a Constitutional body established under Article 67 (1) of the Constitution. The functions of the Commission include initiating investigations on its own initiative or on a complaint into present or historical land injustices and to recommend appropriate redress. In carrying out its mandate, the Commission sits as a quasi-judicial body.

9. From the material placed before me, it is evident that the Commission has made a determination in favour of the Ex-parte Applicants. It is the Ex-parte Applicants position that the Commission’s determination is yet to be acted upon by the Respondents and hence the orders of mandamus sought herein.

10. Accordingly, I am satisfied that the Ex-parte Applicants have made out a case for further consideration and that their application for leave is neither frivolous nor hopeless. I allow the same and hereby direct that a substantive application be filed within 21 days from the date hereof and that the same be served upon all affected persons.

11. The cost of this application shall be in the substantive Motion.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 30TH DAY OF APRIL, 2021.

J.O. OLOLA

JUDGE