



Republic v County Government of Kajiado & another; Kimeu (Exparte Applicant); Maina (Interested Party) (Environment & Land Case 46 of 2018) [2023] KEELC 16157 (KLR) (6 March 2023) (Judgment)

Neutral citation: [2023] KEELC 16157 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ENVIRONMENT & LAND CASE 46 OF 2018

MN GICHERU, J

MARCH 6, 2023

IN THE MATTER OF AN APPLICATION BY BENJAMIN M. KIMEU FOR JUDICIAL REVIEW AND ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION

AND

IN THE MATTER OF COUNTY GOVERNMENT ACT, NUMBER 12 OF 2012

AND

IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015

AND

IN THE MATTER OF COUNTY GOVERNMENT OF KAJIADO

AND

IN THE MATTER OF ARTICLE 40 AND 47 OF THE CONSTITUTION OF KENYA

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY GOVERNMENT OF KAJIADO 1ST RESPONDENT

NATIONAL POLICE SERVICE 2ND RESPONDENT

AND

BENJAMIN M KIMEU EXPARTE APPLICANT

AND

MOSES MWARORI MAINA INTERESTED PARTY



JUDGMENT

1. By the notice of motion dated 15/9/2017, the ex parte applicant seeks the following orders.
 - a. That an order of *certiorari* do issue to quash the decision dated 2/8/2017 by the County Government of Kajiado in declining to validate and or authenticate and or recognize the proprietary interest and or ownership of the ex parte applicant of all that parcel of land known as Plot No 539/Residential – Noonkopir T Center (suit parcel).
 - b. That an order of mandamus do issue directed to the County Government of Kajiado to validate, authenticate and or recognize the proprietary interest of the ex parte Applicant over the suit parcel and to issue him with all the requisite documents of the title to the said property.
 - c. That an order of prohibition do issue barring or prohibiting the OCS Kajiado Police Station, the National Police Service and the County Government of Kajiado from harassing or interfering with the exparte Applicant in his enjoyment or quiet possession of or alienating the suit parcel.
 - d. That costs of the suit be provided for.
2. The motion is supported by a supporting affidavit sworn by the ex-parte Applicant which has eight annexures.

In summary, the ex parte Applicant deposes that he is the owner of the suit land having bought it from Josephine N Kiroken on 19/12/2000. He paid transfer fees on the date of purchase and has been paying rates ever since up to the year 2017.

In 2016, the first Respondent notified all plot allottees that there would be a validation exercise within the county. In November, 2016, the Applicant was called by Joshua Lemaikai, a surveyor employed by the first Respondent who wanted the Applicant's documents for the suit land.

On 2/8/2017, the Applicant visited the offices of the first Respondent and met Mr Lemaikai who declined to validate the Applicant's documents and the reasons given was that the interested party also claimed the suit land. Soon after this, police officers in motor vehicle registration No GKA 205Y refenced the land enclosing the Applicant's caretaker inside the compound. They were with a lady who was unknown to the Applicant. The police officers ordered the Applicant to vacate the suit land and stop any development.
3. The Applicant is aggrieved for the following reasons.

Firstly, the first Respondent did not issue him with a formal communication giving him reasons for failure to validate his ownership of the suit land.

Secondly, the decision by the first Respondent was not objective and impartial.

Thirdly, the Respondents failed to give the Applicant a fair hearing before arriving at their decision.
4. Counsel for the Applicant filed written submissions on 1/10/2019 while counsel for the second Respondent filed his on 29/9/2021.



5. I have carefully considered the motion in its entirety including the affidavits, annexures, grounds, submissions and the law cited therein. I find that the following issues arise in the suit.
 - i. Whether the Applicant was given a fair hearing.
 - ii. Whether the Appellant was given reasons for failure of the first Respondent to validate his letter for allotment.
 - iii. Whether the decision of the first Respondent was objective and impartial.

6. I make the following findings on the above stated issues.

On the first issue, I find that the Applicant has not proved that he was not given a fair hearing. At paragraph 9 of this supporting affidavit, he has said that he was requested to avail his title documents to the suit land by Mr Lemaikai in November, 2016. It was not until 2/8/2017 that the Applicant availed the required documents.

The Applicant has not explained why he had to take about nine months to avail his title documents to the first Respondent. I find that period of eight months to have been inordinate. The Applicant should have availed the title documents immediately or within reasonable time. Eight months was not a reasonable time.

7. On the second issue, I find that the Applicant was not given a written explanation for failure by the first Respondent to validate his title documents. Under Section 4(2) of the *Fair Administrative Action Act* he was entitled to written reasons for such failure to validate.
8. On the third and final issue, I find that it is not the purpose of this suit to look into the merit of the decision by the first Respondent. This suit is only concerned with the procedure adopted in arriving at the decision and not the merit thereof.
9. Considering the prayers by the Applicant against the findings I have made above, I find that the orders for *certiorari* and prohibition are not merited. The only prayer that is merited though only partially is the one for mandamus. I therefore issue an order of mandamus as follows.

The County Government of Kajiado to give the Applicant written reasons for its failure to validate his documents for Plot No 539/Residential-Noonkopir/T Centre. The first Respondent to advise on whether he has a right of appeal or review against its decision and whether he is entitled to a refund of the rates paid by him and/or any other compensation.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 6TH DAY OF MARCH, 2023.

M.N. GICHERU

JUDGE

