



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC JUDICIAL REVIEW NO. 72 OF 2018

(FORMERLY HC. MISC. CIVIL APPLICATION NO. 554 OF 2017)

REPUBLIC.....APPLICANT

=VERSUS=

NATIONAL LAND COMMISSION.....1ST RESPONDENT

CHIEF REGISTRAR OF TITLES.....2ND RESPONDENT

THE DIRECTOR OF SURVEY.....3RD RESPONDENT

AND

SADHANI LIMITED.....1ST INTERESTED PARTY

KEIBUKWO INVESTMENT LTD.....2ND INTERESTED PARTY

EX-PARTE

SAYANI INVESTMENT LIMITED

RULING

On 20th September, 2017, the ex-parte applicant (hereinafter referred to only as “the applicant”) brought an application by way of Notice of Motion dated 19th September, 2017 seeking the following orders;

1. An order of certiorari to remove into the High court for purposes of being quashed and quashing Certificate Title No I.R 180647 being a consolidation/amalgamation of all the properties known L.R Nos. 209/923, 209/924 and 209/925 (the suit properties) into L.R No. 209/20737(amalgamated title) issued by the National Land Commission and the Land Registrar to Sadhani Limited and Keibukwo Investments Limited on 5th October, 2016.

2. An order of mandamus to compel the National Land Commission and the Land Registrar to rectify the land register by cancelling, expunging and removing from the land register any entry or registration of the Certificate of Title No I.R 180647 in respect of L.R No. 209/20737(Original Number 209/923-925) issued to Sadhani Limited and Keibukwo Investment Limited on 5th October, 2016.

3. A conservatory order restraining Sadhani Limited and Keibukwo Investment Limited whether by themselves, their employees, servants, agents and/or assigns or any other person whatsoever acting on their behalf and/or under their mandate and/or instructions from demanding rents from the applicant’s tenants, alienating, advertising for sale, offering for sale, selling, taking possession of, leasing, transferring, charging or otherwise in any manner whatsoever, whether claiming under the Certificate of Title No. I.R 180647 in respect of L.R No 209/20737 or otherwise, interfering with the properties known as L.R No 209/923, 209/924 and 209/925(the suit properties) and the premises or building erected thereon commonly known as Caxton House or the occupants, tenants and or licensees.

4. Cost of the judicial review proceedings.

5. Any other or further consequential orders and/ or directions that may be necessary.

The application was opposed by the interested parties. In a judgment delivered on 4th February, 2021, the court allowed the application on the following terms:

1. An order of certiorari is hereby issued removing into this court and quashing Certificate of Title No. I.R 180647 in respect of L.R No. 209/20737(original number 209/923-925) that came about following the consolidation/amalgamation of all those parcels of land known L.R Nos. 209/923, 209/924 and 209/925 issued by the 1st and 2nd respondents to the interested parties on 5th October, 2016.
2. An order of mandamus is hereby issued compelling the 1st and 2nd respondents to rectify the land register relating to Title No. I.R 18064 in respect of L.R No. 209/20737(Original Number 209/923-925) issued to the interested parties on 5th October, 2016 by cancelling, expunging and removing from the register all entries or registration entered therein as relates to the interested parties' ownership of L.R No. 209/20737(Original Number 209/923-925).
3. The applicant shall have the costs of the suit to be paid by the interested parties.

On 15th March, 2021, the applicant's advocates, Kaplan & Stratton Advocates wrote to the Deputy Registrar of the court requesting for correction of a clerical error in the said judgment. The letter stated as follows in part: *"As you will note from the Notice of Motion application and the judgment, the subject of litigation herein was Certificate of Title No. I.R 180647 issued to the Interested Parties on 5th October, 2016. You will also note that throughout the judgment, the court refers to Certificate of Title No. 180647 and at page 53 of the judgment issued an order of Certiorari removing into the Court and quashing Certificate of Title No. 180647 in respect of L.R No. 209/20737(original number 209/923-925). However, with regard to the order of mandamus, at page 53, the Hon judge in error indicated the Certificate of Title as No. I.R 18064. The last digit "7" is missing....kindly place the court file before the Hon. Justice S.Okong'o for the purposes of correction of the judgment to include the full and correct reference of the Certificate of Title No. 180647 in the order for mandamus at page 53 of the judgment."*

Section 99 of the Civil Procedure Act, Chapter 21 Laws of Kenya gives the court power to correct clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from accidental slip or omission. The correction can be made by the court either of its own motion or on the application by any of the parties.

Upon perusing the letter from the applicant's advocates and going through the judgment and the orders that were made therein, I noted that there was indeed a clerical error at page 53 of the judgment in the order of mandamus. When referring to **Certificate of Title No. I.R 180647** the court wrote **Certificate of Title No. I.R 18064**, the last number "7" was omitted. This is an error which can be corrected under section 99 of the Civil Procedure Act aforesaid.

With a view to involve the other parties in what the court intended to do now that the application for correction of the judgment was not being undertaken by the court of its own motion, I directed that the matter be mentioned on 8th April, 2021 with notice to all the parties. When the matter came up on 8th April, 2021, the advocates for the respondents and the interested parties informed the court that they had no objection to the application by the applicant for the correction of the aforesaid error in the judgment.

Having satisfied myself that the error pointed out by the applicant exist in the judgement and that it can be corrected under section 99 of the Civil Procedure Act and there being no objection to the application for correction, I allow the application and make the following orders;

1. The Judgment delivered on 4th February, 2021 is amended at page 53 in the disposal order number 2 on mandamus by deleting 18064 where it appears and inserting 180647 in place thereof.
2. The decree of the court shall be issued in accordance with the judgment as amended.

DELIVERED AND DATED AT NAIROBI THIS 15TH DAY OF APRIL 2021

S. OKONG'O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Muthui for the Applicant

N/A for the 1st Respondent

Mr. Kamau for the 2nd and 3rd Respondents

Mr. Mukuha h/b for Mr. Bwire for the Interested Parties

Ms. C. Nyokabi-Court Assistant