



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

JUDICIAL REVIEW NO. 9 OF 2017

IN THE MATTER OF THE ENVIRONMENT AND LAND COURT ACT, 2011

AND

IN THE MATTER OF THE LAND REGISTRATION ACT, 2012

AND

IN THE MATTER OF THE LAND ACT, 2012

AND

IN THE MATTER OF THE COUNTY GOVERNMENT ACT, (NO. 17 OF 2012)

AND

IN THE MATTER OF 0.53 CIVIL PROCEDURE RULES 2010, CIVIL PROCEDURE ACT CHAPTER 21 OF THE LAWS OF KENYA

AND

IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT CHAPTER 26 OF THE LAWS OF KENYA

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE NATIONAL LAND COMMISSION.....1ST RESPONDENT

THE COUNTY LANDS REGISTRAR,

UASIN GISHU.....2ND RESPONDENT

THE COUNTY GOVERNMENT OF

UASIN GISHU.....3RD RESPONDENT

AND

THE C.E.C. LAND HOUSING & PHYSICAL PLANNING,

UASIN GISHU COUNTY.....1ST INTERESTED PARTY

THE UASIN GISHU COUNTY

LAND MANAGEMENT BOARD.....2ND INTERESTED PARTY

EX-PARTE

1. RAVINDRA RATILAL TAILOR [*Suing as the Trustee of Uasin Gishu Arts Society of Eldoret*]
2. DAYA SINGH LAHB KALSI [*Suing as the Trustee of Uasin Gishu Arts Society of Eldoret*]
3. NARINDER SINGH LOCHAB [*Suing as the Trustee of Uasin Gishu Arts Society of Eldoret*]
4. UASIN GISHU ARTS SOCIETY OF ELDORET

AND

JUDICIAL REVIEW NO. 4 OF 2016

1. JOSEPH KOECH.....1ST INTENDED INTERESTED PARTY
2. MARK KUTO.....2ND INTENDED INTERESTED PARTY
3. DAISY LANGAT.....3RD INTENDED INTERESTED PARTY

AND

REPUBLIC.....APPLICANT

VERSUS

THE NATIONAL LAND COMMISSION.....1ST RESPONDENT

THE COUNTY LANDS REGISTRAR,

UASIN GISHU.....2ND RESPONDENT

THE COUNTY GOVERNMENT

OF UASIN GISHU.....3RD RESPONDENT

AND

THE C. E. C. LAND HOUSING & PHYSICAL PLANNING,

UASIN GISHU COUNTY.....1ST INTERESTED PARTY

THE UASIN GISHU COUNTY LAND

MANAGEMENT BOARD.....2ND INTERESTED PARTY

EXPARTE

RAVINDRA RATILAL TAYLOR [*Suing as the Trustee of Uasin Gishu Arts Society of Eldoret*] and 3 Others

RULING

[NOTICES OF MOTION DATED 6TH DECEMBER, 2018 IN ELC JUDICIAL REVIEW NO. 9 OF 2017 AND 26TH FEBRUARY, 2019 IN ELC JUDICIAL REVIEW NO. 4 OF 2016]

1. **Joseph Koech, Mark Kuto** and **D. Langat**, the Intended Interested Parties filed the Notice of Motion dated 6th December, 2018 in **Eldoret ELC Judicial Review No. 9 of 2017** and the Notice of Motion dated 26th February, 2019 in **Eldoret ELC Judicial Review No. 4 of 2016**, seeking to be enjoined as Interested Parties and to be granted leave to respond to and submit to the Notices of Motion dated 1st November, 2017 and 10th November, 2016 respectively. The grounds in the two applications are similar. They are that the Intended Interested Parties got to know of these proceedings involving land parcel **Eldoret Municipality Block 13/22** a couple of weeks before filing

the notices of motion. That they are the actual owners of the said land through the letter of allotment dated 9th October, 2009 and that they had paid the stand premium and other attendant costs of **Kshs.378,508** on the 15th October, 2009. The applications are supported by the affidavits of **Joseph Koech**, the 1st Intended Interested Party, sworn on the 6th December, 2018 and 26th February, 2019 reinstating the grounds and annexing copies of several documents.

2. The applications are opposed by **Ravindra Ratilal Taylor**, the 1st Exparte Applicant and 4th Exparte Applicant's official trustee, through the replying affidavits sworn on the 13th December, 2018 and 25th April, 2019. The case of the 1st Exparte Applicant is that the Intended Interested Parties have never owned Eldoret Municipality Block 13/22 and that the letter of allotment they have relied on was fraudulently obtained and was revoked on 19th January, 2011. That no prayers have been sought against the Intended Interested Parties and **Order 53 of Civil Procedure Rules** has no provision for enjoinder of parties.

3. The application is also opposed by County Government of Uasin Gishu and the CEC Land Housing & Physical Planning, Uasin Gishu County, the 1st and 2nd Respondents, through their grounds of opposition dated 14th May, 2019 and 28th May, 2019 respectively, summarized as follows;

(a) That the applications are oppressive, vexatious, an abuse of the court's process, made in bad faith and should be dismissed.

(b) That the applications offend Article 62 of the Constitution on principle of reversion, **Sections 12 and 13 of Land Act No. 6 of 2012, Section 18 (a) (vi) of the Environment & Land Court Act No. 19 of 2011** and **Sections 7 as read with Section 3(a) (b) and (d) of Government Land Act Chapter 155 (1948) sub-legislation.**

4. The Court gave directions on filing and exchanging submissions on the said applications on the 22nd October, 2020 and 9th December, 2020. That during the mention of 1st March, 2021, the learned Counsel for the Intended Interested Parties and the Exparte Applicant confirmed having filed and served their written submissions. The learned Counsel for 2nd Respondent indicated that they are not opposing the applications while that for 3rd Respondent and Interested Parties indicated they will not file any submissions.

A. The Intended Interested Parties' submissions:

- The learned Counsel referred to **Rule 2 and 7(2) of the Constitution of Kenya Protection of Rights and Freedoms Practice and Procedure Rules 2013** on the definition of an Interested Party and principles guiding courts on enjoinder application, and submitted that the main purpose of joining parties is to enable the court deal with the matters before it and avoid multiplicity of suits. That a party seeking to be enjoined in proceedings must satisfy the court that it has an identifiable stake or legal interest or duty in the proceedings.
- The Counsel referred to the Supreme Court of Kenya case of **Francis Kariuki Muruatetu & Another Vs Republic & 5 Others in Petition No. 15/16 of 2016 eKLR**, on the elements to be considered in enjoinder applications and submitted that the Intended Interested Parties as allottees of Eldoret Municipality Block 13/22 vide the letter of allotment dated 9th October, 2009 and upon paying the fees required thereon of Kshs.378,508 they had acquired an identifiable stake and legal interest on the property described thereon.
- That the Intended Interested Parties are therefore necessary parties to be enjoined in the proceedings as they have a duty to protect their claim over the said property. The learned Counsel referred to the cases of **Mai Mahiu Kijabe/Longonot Co. Ltd Vs Ayub Mugo Njoroge & 5 Others Civil Suit No. 1672 of 2001 eKLR**, **Catherine Nyambura Vs Director of Public Prosecutions & 3 Others [2018] eKLR** and **Mumo Matemy Vs Trusted Society of Human Rights Alliance & 5 Others** and submitted that the Intended Interested Parties should be allowed to come on board and ventilate their issues, and ensure each of the party's position is well brought out before the final adjudication is made, and thereby promote access to justice to all persons as required under **Article 48 of the Constitution.**

B. Exparte Applicants' submissions:

- The learned Counsel submitted that the Intended Interested Parties' applications are only aimed at derailing the highlighting of the submissions already filed. That the Intended Interested Parties had after filing the two applications gone ahead and initiated **Eldoret ELC No. 113 of 2019** against the Respondents and Exparte Applicants herein claiming ownership of the same property.
- That the letter of allotment dated 9th October, 2009 upon which the Intended Interested Parties base their claim is not a legal document of title, but an offer to lease. This proceedings was filed after the publication in the Standard Newspaper of 21st January, 2016 which the Intended Interested Parties acknowledge to have known of, but they took no action until they filed the current application.
- That the letter of allotment upon which the Intended Interested Parties claim the land, was revoked vide the Commissioner of Land's letter dated 10th January, 2011 and they did not lodge any challenge. That their applications to be enjoined in these proceedings is aimed at beating the limitation that has now caught up with their claim.
- That the Exparte Applicants' claim is against the Respondents only and there is nothing the Intended Interested Parties are expected to respond to. That in any case the Intended Interested Parties claim over the suit property, if any can be pursued through the suit they have filed against the Respondents and Exparte Applicant being **Eldoret ELC No. 113 of 2019.**
- That the Intended Interested Parties will not suffer any prejudice if the applications are not allowed and their inclusion into these proceedings will be of no value, other than being a nuisance. That the Intended Interested Parties have never challenged the cancellation/revocation of their letter of allotment or the decision thereof.
- That the Intended Interested Parties' applications are brought pursuant to **Sections 1A and 3A of the Civil Procedure Act Chapter 21 of Laws of Kenya**, which are not applicable to Judicial Review proceedings, as the case herein is under **Order 53 of the Civil**

Procedure Rules that is based on **Section 8(1) of the Law Reform Act Chapter 26 of Laws of Kenya**. The learned Counsel cited the decision in **Nairobi High Court Misc. Application No. 5 of 2004** and **Kensalt Ltd Vs Water Resources Management Authority [2018] eKLR**. The learned Counsel submitted that the Intended Interested Parties' applications should be dismissed with costs.

5. The following are the issues for the Court's determinations;

(a) Whether the Intended Interested Parties are proper persons or necessary parties to be enjoined in this proceedings for the issues herein to be determined.

(b) Who pays the costs of the two applications?

6. The Court has carefully considered the grounds on the two applications; affidavit evidence, grounds of opposition, written submissions, the superior Court's decisions cited and come to the following determinations;

(a) That the record confirms **that ELC Judicial Review No. 4 of 2016** was commenced through the Exparte Chamber Summons dated the 24th October, 2016 under Certificate of Urgency. The application was granted on the same date in terms of prayers 1 to 7 after which, the substantive application, being the notice of motion dated 10th November, 2016 was filed. That the proceedings in **ELC Judicial Review No. 9 of 2017** was commenced through the Exparte Chamber Summons dated 18th October, 2017 and granted on the 19th October, 2017. The substantive application being the Notice of Motion dated 15th November, 2017 was filed.

(b) That the two substantive applications dated 10th November, 2016 and 15th November, 2017 seeks more or less similar prayers of certiorari, prohibition, mandamus in respect of L. R. No. 6619/35 (**currently Eldoret Municipality Block 13/22**). That what the Exparte Applicants essentially seeks is for the decision of the National Land Commission (**1st Respondent**) at Table 7 Entry 18 under Gazette Notice No. 6862 of 17th July, 2017 to be quashed. That in **ELC No. 4 of 2016**, the Exparte Applicants seek for the Uasin Gishu County Land Management Board (**3rd Respondent**) decision of 27th April, 2016 contained in their letter dated the 2nd May, 2016 to be equally quashed.

(c) That in all the Exparte Chamber Summons, Notices of Motion and affidavits filed in the two matters by the Exparte Applicants, there is no claim of any attributed to or any relief sought against the Intended Interested Parties to be the basis of their enjoinder in the proceedings.

(d) That from the documents filed by the Intended Interested Parties, the main reason for their applications is to get an opportunity to defend or launch their entitlement claim over land parcel Eldoret Municipality Block 13/22, which was offered to them by the Commissioner of Lands through the letter of allotment dated the 9th October, 2009 and in respect of which, they paid the required fees of Kshs.379,508 on the 15th October, 2009. That whereas, the reasons given by the Intended Interested Parties would otherwise have appeared reasonable basis for enjoinder in ordinary proceedings aimed at deciding on the title of the said land, these proceedings are not of ordinary nature. That these proceedings are not aimed at deciding who is legally entitled to the legal ownership of the suit land, but rather the process leading to the decisions sought to be quashed through the orders of certiorari. That should the Court find merit in the Exparte Applicants' applications, it is expected to call those impugned decisions to court and quash them, thereby returning the parties and property to the status they were before the decision. That if the Court was to uphold the decisions to have been made in accordance with the law, it will decline to interfere. That in both scenarios, the Court would not substitute its decision on the property's ownership in place of that arrived at by the Respondents. That accordingly, the forum for the Intended Interested Parties to mount their claim of ownership of the said property is not these judicial review proceedings.

(e) That had the Intended Interested Parties been desirous to challenge the decisions taken by the Respondents that affected their claim to the property under the letter of allotment dated the 9th October, 2009 through judicial review proceedings under **Order 53 of the Civil Procedure Rules**, then they were obligated to seek for the appropriate leave to apply for the desired orders within the time prescribed. There is no indication that they took any such action. That as the Court has been informed that they have since filed **Eldoret ELC No. 113 of 2019** against the Respondents and Exparte Applicant herein, then the less the Court says about the matter the better.

(f) That this is not a Constitutional Petition and the provisions of the **Constitution of Kenya (Protection of Rights and Fundamental Freedoms Practice and Procedure Rules, 2013)** are not applicable. That however, contrary to the learned Counsel for the Exparte Applicants' position that there are no provisions for enjoinder of parties in proceedings under **Order 53 of the Civil Procedure Rules**, it is clear **Rule 6** gives the Court the discretion to allow a person who wishes to be heard in opposition of the application to be accorded an opportunity. The Rule 6 states;

"6. On the hearing of any such Motion as aforesaid, any person who desires to be heard in opposition and appears to the High Court to be a proper person to be heard, shall be heard notwithstanding that he has not been served with the notice or summons, and shall be liable to costs in the discretion of the Court if the Order should be made."

That the Intended Interested Parties are however not proper persons to be enjoined and heard under the said rule.

(g) That as the Court finds no merit in the Intended Interested Parties' two applications described above, then they should pay the Exparte Applicants and Interested Parties who opposed them the costs.

7. That from the foregoing, the Intended Interested Parties' Notices of Motion dated the 6th December, 2018 and 26th February, 2019 filed in

ELC Judicial Review No. 9 of 2017 and ELC Judicial Review No. 4 of 2016 respectively have no merits and are hereby dismissed with costs to the Exparte Applicants and Interested Parties.

Orders accordingly.

Delivered virtually and dated at Eldoret this 14th day of April, 2021.

S. M. KIBUNJA

JUDGE

In the presence of:

Applicant: Absent.

Respondents: Absent.

Interested Parties: Absent.

Intended Interested Parties: Absent.

Counsel: Mrs Lagat for Otieno Exparte Applicants.

Mr. Omondi for Gachie for Intended Interested Parties and

M/s Chesoo for 3rd Respondent, 1st and 2nd Interested Parties.

Court Assistant: Christine

and the Ruling is to be transmitted digitally by the Deputy Registrar to the Counsel on record through their e-mail addresses.