



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC JR CASE NO. E017 OF 2021

MOHAMED GITUMA.....1ST APPLICANT

ZEITUN HUSSEIN.....2ND APPLICANT

VERSUS

KADHI'S COURT NAIROBI.....RESPONDENT

HASSAN ALI SALEH FARHAN.....INTERESTED PARTY

RULING

1. The Applicants vide their Chamber Summons dated 15th December 2021 sought the following reliefs: -

i. That the instant Application be certified as urgent and leave be granted to be heard ex parte.

ii. That leave be granted to the Applicant to apply for an order of CERTIORARI to remove and bring to this Honourable Court for purposes of quashing the decision of the Respondent through an order dated 14th July 2021;

iii. That leave be granted to the Applicant to apply for an order of CERTIORARI to remove and bring to this Honourable Court for purposes of quashing the decision of the Respondent through a Decree dated 28th July 2021;

iv. That leave be granted to the Applicant to apply for an order of PROHIBITION prohibiting the Interested Party either by himself, his agents or servants from disturbing the Applicants, trespassing or encroaching into the suit property of the Applicants herein;

v. That the leave so granted to the Applicant do operate as stay of the decision by the Respondent to estop the Applicants from egressing, encroaching, trespassing, or doing any construction or development on the suit property;

vi. The costs of the application;

vii. Any other further relief that this Honourable Court may deem fit and just to grant in the circumstances.

2. The application was accompanied by the 1st Applicant's Statutory Statement, verifying affidavit and other supporting documents. It was the 1st Applicant's assertion that the Kadhi's court's decision has occasioned a breach of the principles of natural justice and breach of their constitutional rights to privacy and ownership of property.

3. The Court is guided by **Order 53. Rule 1(4) of the Civil Procedure Rules** which expressly provides as follows:

“(4) The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise: Provided that where the circumstances so require, the judge may direct that the application be served for hearing inter parties before grant of leave. Provided further that where the circumstances so require the judge may direct that the question of leave and whether grant of leave shall operate as stay may be heard and determined separately within seven days.”

4. In an application for leave such as the present one, the Court ought not to delve deeply into the arguments of the parties, but should make

cursory perusal of the evidence before it and make the decision as to whether an applicant's case is sufficiently meritorious to justify leave. I have looked at the affidavit and statement. I see no reason why I should deny the applicant the leave sought. I hereby do grant leave to commence the intended action.

5. For this reason, the Court so orders that: -

i. Leave be granted to the Applicants to apply for an order of CERTIORARI to remove and bring to this Honourable Court for purposes of quashing the decision of the Respondent through an order dated 14th July 2021;

ii. Leave be granted to the Applicants to apply for an order of CERTIORARI to remove and bring to this Honourable Court for purposes of quashing the decision of the Respondent through a Decree dated 28th July 2021;

iii. Leave be granted to the Applicants to apply for an order of PROHIBITION prohibiting the Interested Party either by himself, his agents or servants from disturbing the Applicants, trespassing or encroaching into the suit property of the Applicants herein;

iv. The substantive motion be filed and served within the next 7 days from today or else the leave granted herein shall lapse.

v. The leave granted shall operate as a stay of the Kadhi's court order dated 14th July 2021 and decree issued on 28th July 2021.

vi. Costs of the instant application shall be reserved to abide the determination of the substantive motion.

6. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 3RD DAY OF FEBRUARY 2022

E. K. WABWOTO

JUDGE

In the presence of: -

Ms. Martina Swiga appearing with Mr. Danstan Omari for the Applicant.

N/A for the Respondent.

N/A for the Interested Party

Court Assistant; Caroline Nafuna.