



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC JR CASE NO. 22 OF 2017

REPUBLIC.....APPLICANT

VERSUS

THE COUNTY LAND REGISTRAR NAROKRESPONDENT

AND

ZUBEDA BHACHU.....EX-PARTE/APPLICANT

JUDGMENT

By a Notice of Motion dated 16TH March 2018 and brought under Order 53 Rule 3 of the Civil Procedure Rules the ex-parte applicant sought for the following orders:-

i. Spent

ii. **THAT** the Honourable court be pleased to issue an order of Mandamus against the respondent over failure to implement the court order in Nairobi HCCC No. 659 of 1997 being the rectification of the register in respect of Narok /Township /14 deleting or cancelling the registration of Hava Isak Suleiman as proprietor and substituting her with Zubeda Bachu.

The applicant contends that the subject parcel of land was owned by the family of Zubeda Bachu and they have been in continuous occupation and possession since 1905. However, sometimes prior to 1997 the now deceased husband to Hava Isak Suleiman fraudulently caused the registration of the said LR NO. Narok/Township/14 in his name and filed a suit in Nairobi being Nairobi HCCC 659 of 1997. The applicant herein had filed a defence and counter claim to the suit land upon hearing and determination. The suit was dismissed and Judgment entered for the defendant on the counterclaim and the plaintiff appeal to the Court of Appeal being Civil Appeal Nairobi 98 of 2011 dismissed. However, despite the decision of the court the respondent has failed to implement the order of the court and thus the instant application.

To the applicant there is a supporting affidavit sworn by the Zubeda Bachu on 16/3/2018 in which she deposed to the fact that despite obtaining Judgment in her favour. The Narok County Registrar has failed to implement the orders of the court and she seeks an order of mandamus to compel the Registrar to effect the Judgment of the court.

The application was opposed by the respondent by way of an replying affidavit sworn by **NICCO NZUKI MUTISO** who was the District Land Registrar Narok North and south. He contended that the Judgment of the court that is referred to by the applicant does not direct state on what the specific action the land Registrar ought to carry out and further that he was not a party to the suit that the Judgment related to and he was not served with a copy of the decree and further that on the suit therein is a charge registered in favour of the Barclays Bank of Kenya Limited.

In a further affidavit that was filed by the applicant in reply to the replying affidavit the applicant averred that the Commissioner of Lands was a party to the suit and counterclaim and hence there was no need to have the District land Registrar enjoined in the suit and she further stated that the High court have conclusively dealt with the matter and the contention by the respondent that Barclays Bank Limited ought to have been enjoined is irrelevant.

I have considered the application before me, the replying affidavit in opposition to the decree and the submission filed by the parties and the main issues for determination before me is whether the exparte applicant has made out a case for the grant of the orders of mandamus.

In the instant issue is straight forward, the exparte applicant contends that she is a beneficiary of (2) two Judgments one issued by the High

court and another by the court of Appeal with regard to ownership of land parcel Narok/Township/14; In which the High Court had entered Judgment in her favour on a counterclaim and declared her as the lawful owner of the subject matter. The respondent though not disputing that judgment was in favour of the applicant states that though there were no specific orders directed at her to comply and further that there exists on the title a charge registered in favour of Barclays Bank Kenya Limited and for that reason he continued registered the applicant the lawful owner of the land.

The ex parte applicant faced with the dilemma of having a judgment in her favour and the refusal by the Registrar to register her interest on the land necessitated the instant application and seeks the court to commence the respondent to effect the judgment of the court by way of an order of mandamus.

The respondent has not contested that the fact that there is a judgment of High court that found the ex parte applicant on the lawful owner of the suit land. In any event, the Commissioner of land was party to the case before the High court and if indeed as claimed by the respondent that it will be hard to register the ex parte applicants right, the respondent to have either appreciated the judgment as sought to have the same review neither of what he did and have the refusal by the Registrar to refuse the registration of the ex parte applicant right was an erroneous factual position and unreasonable. The Registrar had a statutory and public duty to comply with the judgment of the court and am convinced that the applicant has demonstrated the respondent being in breach of his duty. In **Republic =Vs= Registrar of societies and 5 Others Ex parte Kenyatta and 6 others HCMA No. 747 of 2006 (2008) 3 KLR (EP) 51**. The court observed that a party in a Judicial Review seeking an order of mandamus must show the existence of a statutory duty conferred or invested by statute upon some person, body or persons who has failed.

The respondent is vested as the sole custodian of all records that relates to land ownership in the county and is further vested with the authority to maintain a Register showing the interest of any individual who owns land in the county and his refusal to register as interest judicially determined by the court is null and void.

With regard to the Registrar of Land the East Africa Court of Appeal held in;- **The District Commissioner Kiambi =vs= R and others Ex parte, Ethan Njau Civil Appeal No. 2 of (1968) EA 109**.

“Mandamus to the Registrar is surely one method of putting right an erroneous entry in the register, and is peculiarly applicable when fault is alleged to lie with the Registrar, if that official refused to act in circumstances which we should act an order of mandamus would appear appropriate”

Having considered the application in this entity I find that the refusal by the Registrar to effect the judgment of the court was an infringement of the right of the applicant and I therefore grant the following orders;-

- 1) That an order of mandamus do issue against the respondent directing him to implement the decision of the court in Nairobi HCCC No. 659 of 1997 and more particularly to rectify the register with respect to LR NO. NAROK/TOWNSHIP/14 by deleting and cancelling of Registration of Hava Isack Suleiman as proposed and substituting with the name of Zubeda Bacho.
- 2) That each party shall bear their own costs.

DATED and SIGNED at NAROK this 8th day of November, 2021.

MOHAMED N. KULLOW

JUDGE