



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

JUDICIAL REVIEW CASE NO. 9 OF 2020

REPUBLIC.....APPLICANT

=VERSUS=

LAND REGISTRAR, RUIRU.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

=AND=

WILLIAM KIBERA WAIGANJO

(suing on behalf of LEAH WACHU WAIGANJO).....EX-PARTE APPLICANT

RULING

1. By a chamber summons dated 20/11/2020, the *ex parte* applicant sought the following orders:

1. That the *ex-parte* applicant William Kibera Waiganjo, suing on behalf of Leah Wachu Waiganjo, be granted leave to apply to the High Court for orders of mandamus directed at the Land Registrar, Ruiru to cancel and recall Title Number Ruiru/Ruiru East Block 2/350 in the names of Jane Wanjiku Ngugi and rectify their records to indicate the *ex-parte* applicant Leah Wachu Waiganjo as the legal and registered owner of land parcel number Ruiru/Ruiru East Block 2/350 as per the judgment of the lower court in Thika CMCC No. 1134 of 2004.

2. A prohibitory order do issue prohibiting the Land Registrar, Ruiru, and her agents from demanding and or asking for a clearance certificate from Nyakinyua Investment Limited.

3. That an order of mandamus to compel the County Land Registrar, Thika Land Registry, to construct the file and/or Green Card of Ruiru/Ruiru East Block 2/350

4. That costs be provided for.

2. The *ex parte* applicant alleged that the Land Registrar, Ruiru Lands Registry, had refused and or ignored to rectify the entries in their records as decreed in the Judgment delivered on 10/12/2018 in **Thika CMCC No. 1134 of 2004** wherein the *ex parte* applicant was declared as the legal and registered owner of Land Parcel Number **Ruiru/Ruiru East Block 2/350** and the title in the name of **Jane Wanjiku Ngugi** was cancelled.

3. The respondents' filed grounds of opposition dated 15/12/2020. They contended that the application was fatally defective and offended the laws and regulations relating to the procedure of seeking leave in a judicial review application. They further averred that prayers 2 and 3 of the chamber summons were issues of procedure regulated under **Section 33** of the Land Registration Act and **Regulation 28** of the Land Registration (General) Regulations, 2017.

4. The court directed parties to file written submissions. The *ex parte* applicant filed his submissions on 12/2/2021 through the Law Firm of **Bwogo Manoti & Chepngeno Associates** while the respondents filed their written submissions through **Benson Njagi, State Counsel**.

5. The court has considered the application, grounds of opposition, and the parties' respective submissions. The key issue for determination in the said chamber summons application is whether the applicant has satisfied the criteria for grant of leave to apply for judicial review orders.

6. Grant or refusal of leave is an exercise of judicial discretion. The general test to be applied is whether the applicant has made out an arguable case to warrant grant of leave. [See the decision in *Uwe Meixner & another v Attorney General, (2005) eKLR*]. Secondly, the purpose of the application for leave is to eliminate applications which are frivolous, vexatious or hopeless and ensure that only those applications disclosing arguable cases proceed for further consideration. Thirdly, when considering an application for leave, the court seized of the application is required to consider the appropriateness of judicial review proceedings *vis-à-vis* other modes of seeking judicial redress, taking into account the limited efficacy of judicial review, the nature of evidence necessary in the particular case, and the key parties involved in the dispute.

7. It emerges from the evidential materials presented to the court that there are allegations that the relevant Land Registrar has failed to discharge his mandate in terms of the law and the decree of the court issued in Thika CMCC No. 1134 of 2004. There is therefore a proper basis for further consideration of the matter.

8. Secondly, it does emerge from the evidential material presented to the court that **Jane Wanjiku Ngugi** is a necessary party in the effective and complete adjudication of the intended judicial review motion. Consequently, I will direct that she be made an interested party in the substantive motion and the motion be served on her.

9. In the ultimate, the chamber summons dated 24/11/2020 is disposed in the following terms.

a) That the ex-parte applicant, William Kibera Waiganjo, suing on behalf of Leah Wachu Waiganjo is granted leave to apply to the Environment and Land Court for orders of mandamus directed at the Land Registrar, Ruiru, to cancel and recall title number Ruiru/Ruiru East Block 2/350 in the name of Jane Wanjiku Ngugi and rectify their records to indicate the ex-parte applicant, Leah Wachu Waiganjo, as the legal and registered owner of land parcel number Ruiru/Ruiru East Block 2/350 as per the judgment of the lower court in Thika CMCC No. 1134 of 2004.

b) The ex-parte applicant shall file and serve the substantive notice of motion within 21 days.

c) The ex-parte applicant shall join Jane Wanjiku Ngugi as an interested party in the substantive notice of motion.

d) Costs of this application shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 8TH DAY OF NOVEMBER 2021

B M EBOSO

JUDGE

In the presence of: -

Mr Njuguna for the Ex-parte Applicant

Court Assistant: Lucy Muthoni

B M EBOSO

JUDGE