

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

JR NO. 7 OF 2017

SPIRE BANK LIMITED.....EX PARTE APPLICANT

-VERSUS-

LAND REGISTRAR.....RESPONDENT

AND

1. ABDULGADER SHARIFF SALEH

2. NUR SHARIFF OMAR.....INTERESTED PARTIES

RULING

1. Pursuant to leave granted by the court on 8th May, 2017, the ex-parte applicant herein, Spire Bank Limited filed the notice of motion dated 11th May, 2017 seeking for orders of Judicial Review in the nature of certiorari, mandamus and prohibition. In response to the application, the respondent filed grounds of opposition dated 8th July, 2017 while the interested parties filed a replying affidavit and a notice of preliminary objection dated 24th August, 2017. The court subsequently directed that the said preliminary objection be heard first, and the same was argued on 10th October, 2017. The court record shows that Mr. Wafula advocate appeared for the ex-parte applicant while Mr. Omondi advocate held brief for Mr. Bundi for the 1st and 2nd interested parties. There was no appearance for the respondent.

2. The record further shows that a ruling on the said preliminary objection was delivered on 30th January 2018 in the presence of Mr. Wafula for the applicant, Mr. Wameyo who was holding brief for Mr. Bundi for interested parties and Mrs. Waswa for the respondent. In that ruling, the court upheld the interested parties preliminary objection and court struck out with costs the ex-parte applicants notice of motion dated 11th May 2017. The ex-parte applicant was dissatisfied with the said ruling and wished to appeal against the same before the Court of Appeal hence filed a notice of appeal on 12th February, 2018. The record shows that on 23rd October, 2020, a representative of Cootow & Associates Advocates for the ex-parte applicant appeared in the registry and fixed the application dated 11th May, 2017 for hearing on 2nd March 2012 and on that date, Mr. Wafula appeared for the ex-parte applicant and purported to prosecute the said application. It is clear from the record as outlined hereinabove that there was no pending application by the ex-parte applicant since notice of motion dated 11th May, 2017 had been struck out. Besides, this court observes that Mr. Wafula the ex-parte applicant's advocate was in court on 30th January 2018 when the ruling striking out the said application was delivered and even applied to be supplied with copies of typed proceedings and ruling which application was granted by the court. Although the court reserved a ruling for 26th May, 2012, it is clear from the record that there is nothing left for the court to decide, the application dated 11th May, 2017 having been determined by the ruling on delivered on 30th January, 2018. As it were the court was being asked to make a ruling in a matter which was already decided

3. In view of the above, I have come to the conclusion that there is nothing to decide on. I accordingly down my tools as there no pending application that warrants ruling by the court.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 26TH DAY OF MAY, 2021

C.K. YANO

JUDGE

IN THE PRESENCE OF:

Yumna Court Assistant

C.K. YANO

JUDGE