



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**JUDICIAL REVIEW APPLICATION NO. 89 OF 2019**

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF MANDAMUS**

**AND**

**IN THE MATTER OF: THE CONSTITUTION OF THE REPUBLIC OF KENYA (CHAPTER 4 BILL OF RIGHTS)**

**AND**

**IN THE MATTER OF: THE LAW REFORM CAP 26, SECTION 8 AND 9**

**AND**

**IN THE MATTER OF THE LAND REGISTRATION ACT (2012)**

**AND**

**THE NATIONAL LAND COMMISSION ACT (2012) LAWS OF KENYA**

**AND**

**IN THE MATTER OF FAIR ADMINISTRATIVE ACTIONS ACT NO. 4 OF 2015**

**BETWEEN**

**EDWYN CHEGE NGANGA.....1<sup>ST</sup> APPLICANT**

**GEOFFREY KANJA MUGO.....2<sup>ND</sup> APPLICANT**

**GRACE SERAH ANYANGO OMONDI.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**DISTRICT LAND REGISTRAR KAJIADO DISTRICT REGISTRY.....RESPONDENT**

**AND**

**JAMES KARIUKI KARANJI.....INTERESTED PARTY**

**RULING**

What is before Court for determination is the Applicants’ Chamber Summons Application dated the 2<sup>nd</sup> October, 2019 brought pursuant to Section 1A, 3A and 3B of the Civil Procedure Act; Section 8 & 9 of the Law Reform Act; and Order 53 Rules 1(1) (2) and 3(1) of the Civil Procedure Rules. The Applicants seek for leave to apply for an order of Mandamus to remove into this court and compel the Respondent to remove the restriction entries against land parcel number Kajiado/ Olooitikoshi/ Kitengela 2088 which is the mother title to LR No. Kajiado/ Olooitikoshi/ Kitengela 31732.

The application is supported by the Statutory Statement filed together with the Verifying Affidavit of E. CHEGE NGANGA Advocate where

he deposes that the Respondent has refused/ neglected to remove the caution entered into by the Interested Party in Land Parcel Number Kajiado/ Olooitikoshi/ Kitengela 2088. Further, the said Interested Party applied to remove the said cautions on 8<sup>th</sup> August, 2013 and 10<sup>th</sup> July, 2014 respectively but his applications were rejected, yet the Interested Party had no further claim against the said parcels of land. They confirm that the registered owners of parcel numbers Kajiado/ Olooitikoshi/ Kitengela 31732 Julius Kipolonga Malei and Purity Kimwaticayo sold the said parcel of land to the Applicants and a title deed was issued to them on 5<sup>th</sup> October, 2010. Further, when the Applicants sought to subdivide their land, they were informed of the existence of the restriction which had been placed by the Interested Party that caused the Respondent to withhold the Green Cards for Kajiado/ Olooitikoshi/ Kitengela 31732, pending the Interested Party removing the caution. They reiterate that failure by the Respondent to remove the caution despite the application for its removal, without reasons, is unconstitutional, unreasonable, abuse of office and illegal.

### **Analysis and Determination**

Upon perusal of the Chamber Summons Application dated the 2<sup>nd</sup> October, 2019 including the Statutory Statement and Verifying affidavit as well as the annexures thereon, I find that the only issue for determination is whether the Ex parte Applicant is entitled to leave to commence judicial review proceedings.

The Applicants seek for leave to apply for an order of Mandamus to remove into this court and compel the Respondent to remove the restriction entries against land parcel number Kajiado/ Olooitikoshi/ Kitengela 2088 which is the mother title to LR No. Kajiado/ Olooitikoshi/ Kitengela 31732. He contends that despite numerous requests, the Respondent has declined to do so, and he has hence failed to perform his public duty. Further, this is a breach of the principles of natural justice.

In the case of **Republic vs. County Council of Kwale & Another Ex Parte Kondo & 57 Others Mombasa HCMCA No. 384 of 1996** Waki, J (as he then was) provided the parameter for granting leave to file judicial review and stated as follows:

**“The purpose of application for leave to apply for judicial review is firstly to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration. The requirement that leave must be obtained before making an application for judicial review is designed to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived... Leave may only be granted therefore if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the applicant the test being whether there is a case fit for further investigation at a full inter partes hearing of the substantive application for judicial review. It is an exercise of the court’s discretion but as always it has to be exercised judicially”.**

I note on 12<sup>th</sup> November, 2019, the Respondent was granted leave to file a response to this application but he failed to do so. Further, on perusal of the letter dated the 2<sup>nd</sup> May, 2017 annexed to the affidavit, which was written by the Interested Party and addressed to the Respondent, he confirmed that they had no interest in land parcel Kajiado/ Olooitikoshi/ Kitengela 2088 and requested him to remove the caution dated the 21<sup>st</sup> September, 2012. Despite receiving the said letter on 2<sup>nd</sup> May, 2017 as shown in the Respondent’s stamp on the letter, he has failed to remove the caution. Further, from the other documents annexed to this application including the Certificate of Title dated the 5<sup>th</sup> October, 2010, it is evident that the Ex Parte Applicants are the registered proprietors of land parcel number Kajiado/ Olooitikoshi/ Kitengela 31732. In the current scenario, there is no reason given why the Respondent has declined to remove the said caution.

It is against the foregoing and in associating myself with the judicial authority cited above that I will exercise my discretion and grant the Ex parte Applicant leave to commence judicial review proceedings of Mandamus within 21 days from the date hereof.

Costs will be in the cause.

**Dated signed and delivered Virtually at Kajiado this 20<sup>th</sup> May, 2021.**

**CHRISTINE OCHIENG**

**JUDGE**