



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO. 39 OF 2013

REPUBLIC.....APPLICANT

VERSUS

DIRECTOR OF SURVEY.....RESPONDENT

EX-PARTE SIMON KIPRONO MUTAL.....APPLICANT

JUDGMENT

(Judicial review motion seeking orders of certiorari to quash what the applicant termed as a reparcellation of his land to introduce a new parcel of land in name of the interested party; apparent that issue at hand is not a simple reparcellation but a dispute over the title of the interested party; there being a substantive suit regarding the title of the interested party; not proper in the circumstances to issue the order of certiorari; motion dismissed).

1. This is a judicial review motion seeking orders of certiorari to quash the decision of the Director of Surveys of reparcelling the land Nakuru/Teret/433 and introducing a land parcel Nakuru/Teret/800 and also of amending the Registry Index Map (RIM) for Teret Settlement Scheme. Leave to commence the proceedings was granted on 26 September 2013 and the substantive motion was filed on 8 October 2013.

2. The applicant has averred that he is the registered proprietor of the land parcel Nakuru/Teret/433 (parcel No. 433) situated within Mauche Settlement Scheme and that he was issued with a title deed sometimes in the year 1997. He has stated that according to the original map, his land borders a water catchment area/dam. He has claimed that on 26 March 2013, the respondent reparcelled his land and introduced the land parcel Nakuru/Teret/800 (parcel No.800). He asserts that this was done secretly without his knowledge. This land was allocated to the interested party, whom the applicant claims to be a total stranger in Mauche Settlement Scheme. His position is that the respondent has unjustifiably introduced a stranger to occupy his land thus infringing on his rights to own land. He has stated that he was not afforded any opportunity before the reparcellation thus a breach of the principles of natural justice and legitimate expectation. To his supporting affidavit, he has annexed both the old map, which did not bear the parcel No. 800 and the new map, with this new parcel No. 800.

3. The respondent did not file anything, thus leaving the battle to the interested party, the owner of the land parcel No. 800. In his replying affidavit, the interested party has deposed inter alia that he is the rightful proprietor of the land parcel No. 800 and he has annexed a copy of his title deed. He has stated that his title has never been cancelled and he has denied the allegation of the ex-parte applicant that there was a reparcellation. He has pointed out that there is a pending suit, being Nakuru CMCC No. 579 of 2014, vide which the ex-parte applicant has challenged the reparcellation of his land parcel No. 433. He has averred that he has been in occupation of his land since it was allocated to him and he has done substantive developments. He has further stated that the ex-parte applicant has filed several suits, being Nakuru CMCC No. 1676 of 2007, Criminal Case No. 1055 of 2007, CMCC Land Dispute No. 58 of 2007, Judicial Review Application No. 39 of 2003, and CMCC No. 319 of 2014. He has complained that the ex-parte applicant has not paid the costs of the case CMCC NO. 1676 of 2007. He has also averred that this court may be misled to issue certiorari orders outside the 6 months limitation.

4. I have considered the motion and the submissions filed by counsel for the applicant and the interested party.

5. As I have mentioned, the case of the ex-parte applicant is that the Director of Surveys, illegally reparcelled his land so as to introduce the parcel No. 800 of which the interested party has title. On the other hand, the interested party asserts that the land parcel No. 800 legally belongs to him. Both the ex-parte applicant and the interested party have displayed copies of title deeds to their respective parcels of land. The ex-parte applicant has a title deed which was issued on 16 July 1997, whereas the interested party has a title deed which shows that it was issued on 15 May 2002. I have seen the two maps annexed by the ex-parte applicant. One of the maps shows the parcel No. 433 and the other map shows this parcel No. 433, now reduced by about a half, the other half now bearing the parcel No. 800.

6. I have also seen from the documents annexed by the interested party, that the two have been in court over the issue of ownership of these two parcels of land. The interested party has mentioned several cases and I have taken the trouble of calling for the file Nakuru CMCC No.

597 of 2014 and of going through it. I have also seen the various pleadings in the other mentioned files. I have seen a copy of the plaint in the suit Nakuru CMCC No. 1676 of 2007. The ex-parte applicant was the plaintiff, and he sued the interested party, claiming that sometimes in the year 1999, the interested party encroached into the land parcel No. 433 and laid claim to it. In the suit, he sought orders of vacant possession. I have not seen the judgment, but it does appear that the ex-parte applicant lost this case, for I have seen a certificate of costs in favour of the interested party.

7. I have also seen a copy of the plaint in the case Nakuru CMCC No. 319 of 2014 where the ex-parte applicant was again plaintiff and the interested party was defendant. In this case, the ex-parte applicant wanted the interested party permanently restrained from burying his late wife on the disputed land. In the suit, the ex-parte applicant averred that the interested party has encroached onto his land and curved out the land parcel No. 800. I do not know what happened to this matter as I was not able to get hold of the file.

8. The other suit of interest is the case Nakuru CMCC No. 597 of 2014. The ex-pate applicant is plaintiff and he has sued the interested party. In this case, he has pleaded that he is the owner of the land parcel No. 433 and that the interested party has encroached into it to curve out the land parcel No. 800. In the suit, he asked for a permanent injunction to stop the interested party from dealing with the disputed property. I have seen that the interested party in his defence has asserted ownership of the land parcel No. 800.

9. Now, I wonder why the ex-parte applicant is in this court. It does appear to me that the issue at hand is much more complex than a simple reparcellation of land. There is a live dispute of ownership between the ex-parte applicant and the interested party over whether the interested party properly owns the land parcel No. 800. The issue of whether or not the land parcel No. 800 was properly created, is an issue that can be determined in the substantive suits filed by the ex-parte applicant. That aside, it cannot be said that the ex-parte applicant has approached this court with clean hands. He did not reveal the fact that he had previous litigation over the same subject matter and the outcome thereof. Clearly, he intended to conceal this fact from court, so that the court is not aware of the history of litigation that he has had over the land in dispute. In so far as I can see, this suit is clearly an abuse of the process of court. The ex-parte applicant had opportunity to argue the dispute over ownership of the land in the suit filed in the year 2007 and have the same decided once and for all. Coming to this court to claim that the issue is a mere reparcellation and not a dispute of ownership, was clearly intended to mislead this court. In any event, I wonder why the ex-parte applicant would want this court to make a decision in this matter, when he himself has filed a suit which is pending, and which may very well determine all issues over the ownership of the land in dispute.

10. It is because of the above that I find no merit in this motion and the same is hereby dismissed with costs to the interested party.

11. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 4th day of October 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of: -

Mr. Kibet for the ex-parte applicant.

No Appearance for the respondent.

No Appearance for the interested party.

Court Assistant: Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU