



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MURANG'A
MISC APPL NO. 4 OF 2021
THE CONTRACT ACT S. 3(3)
AND IN THE MATTER OF THE LAND ACT

AND

LAND REGISTRATION ACT NO 3 OF 2012 LAND ACT NO 6 OF 2012

LAND CONTROL ACT

AND

IN THE MATTER OF FAIR ADMINISTRATIVE ACT

BETWEEN

HANNAH WANJIRU GITAU..... APPLICANT

VS

CHAIRMAN, MURANG'A

KANDARA LAND BOARD.....RESPONDENT

RULING

1. The Applicant moved the Court vide a Chamber Summons application dated 31/-3/2021 seeking orders that; -

a) Spent.

b) That an order of certiorari to quash the order to defer the decision of the Land Control Board, Kandara Murang'a to issue consent to transfer the land known as LOC.4/NGUTHURU/414, MURANGA, till the Applicant serves the Board with Letters of Administration and or grant of Letters of Administration pending the hearing and determination of the cause of High Court.

c) That an order of mandamus do issue directing the Land Control Board, Kandara Murang'a do issue consent to transfer the land known as LOC.4/NGUTHURU/414 from the Donor (Gitau Kinguri – Deceased) to the Donee (Hannah Wanjiru Gitau) herein unconditionally.

d) THAT the Murang'a Land Registrar to effect the said transfer to the Donee upon payment of all statutory fees and Stamp Duty.

2. The application is based on grounds that the Respondents have deferred the application for Land Control Board on the grounds that the Decree requires letters of Administration of the deceased person. That the deceased had issued completion documents to the Donee before his demise and thus the Applicant requires leave of Court to transfer the said land. Lastly that the Applicant is elderly at 81 years and ill and unless the transfer is done, any eventuality will cause the gift to lapse.

3. The Chamber summons is supported by the Verifying Affidavit of Hannah Wanjiru Gitau, the Applicant. She deponed that she intends to get leave of Court to institute Judicial review against the decision of the Kandara Board. That she has been advised that the suit land is not a

subject of succession since the donor had exercised his statutory duties and urged the Court to order the Chairman Land Control Board to issue the consent.

4. The application is unopposed.

5. The Respondent was served vide a Return of Service sworn on 8/6/2021.

6. The application was argued orally before this Court on 10/6/2021. Learned Counsel Mr. Pala for the Applicant argued that the Respondent has failed to issue the consent to enable the Applicant transfer the land to herself. He relied on the filed pleadings and a list of authority dated 2/6/2021 in urging the Court to order the grant of consent. Reliance was placed on the case of **The Registered Trustees of Anglican Church of Kenya Mbeere Diocese Vs. The Rev. David Waweru Njoroge in Court of Appeal, CA No. 108 of 2002.**

7. In my view, the issue for determination is whether the application as drawn is competent to grant the orders sought.

8. The application is expressed to be brought under Order 53 Rule 1(4) Order 1 of the Civil Procedure Act (*sic*) which provides;

Applications for mandamus, prohibition and certiorari to be made only with leave [Order 53, Rule 1.]

(4) The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise:

Provided that where the circumstances so require, the judge may direct that the application be served for hearing *inter partes* before grant of leave.

Provided further that where the circumstances so require the judge may direct that the question of leave and whether grant of leave shall operate as stay may be heard and determined separately within seven days.

9. An application under this Rule obliges an Applicant to seek leave before instituting such proceedings. Order 53 Rule 1 of the Civil Procedure Rules provides that;

(1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.

10. The Applicant did not seek leave as mandated by the said Rule. The substantive prayers in the instant Chamber summons seek orders for certiorari and mandamus. This is in direct contradiction to the Applicant's averment in paragraph 2 of her Verifying Affidavit that;

...(2) That I intend to get leave of Court to institute Judicial Review emanating from the refusal to grant me the consent on the reason that I have not Letters of Administration grant yet I hold the capacity of a donee.

11. The application is also brought under the Fair Administrative Action Act (FAA) No. 4 of 2015 the FAA Act which states in Section 9 as follows;

(1) Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a subordinate Court upon which original jurisdiction is conferred pursuant to Article 22(3) of the Constitution.

(2) The High Court or a subordinate Court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for Appeal or review and all remedies available under any other written law are first exhausted.

(3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that Applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).

(4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the Applicant, exempt such person from the obligation to exhaust any remedy if the Court considers such exemption to be in the interest of justice.

(5) A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may Appeal to the Court of Appeal.

12. The FAA Act was enacted to effect Article 47 of the Constitution which provides that every person has the right to an administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. Under the said Act leave is not a requirement.

13. I am guided by the Court's decision in **Felix Kiprono Matagei v Attorney General; Law Society of Kenya (Amicus Curiae) [2021] eKLR** where the Court held that a Petitioner need not seek leave to commence judicial review proceedings under the FAA Act.

14. Even if I was inclined to determine the application under the FAA, the Applicant failed to present the impugned decision of Kandara

Land Control Board to this Court that she sought to be quashed and or reviewed by the Court. In the circumstance therefore it is the finding of the Court that going by the application as drafted, the Court would be proceeding in the dark, a misadventure that this Court is not prepared to undertake.

15. Further the Court finds that the Applicant did not adduce any single evidence to support her application/claim to wit the statutory documents said to have been completed by the donor in her favour.

16. In the end the application is for striking out. I proceed to do so with no orders as to costs.

17. **It is so ordered.**

DATED, SIGNED AND DELIVERED ONLINE AT MURANG'A THIS 30TH DAY OF JUNE 2021

J. G. KEMEI

JUDGE

Delivered online in the presence of:

Pala for the Applicant

Respondent: Absent

Court Assistant: Alex