



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC JUDICIAL REVIEW CASE NO. 60 OF 2019

MARGARET NYAMBURA & 117 OTHERS.....APPLICANTS

VERSUS

NAIROBI CITY COUNTY.....1ST RESPONDENT

NATIONAL LAND COMMISSION.....2ND RESPONDENT

CHIEF LAND REGISTRAR.....3RD RESPONDENT

RULING

The *Ex-parte* Applicants (“the Applicants”) brought the application dated 19/12/2019 seeking leave to file an application for an order of mandamus by way of Judicial Review directed at and to compel the County Secretary and Head of County Public Service, City Hall, Nairobi City County, the 1st Respondent and the Chairman National Land Commission as well as the Chief Land Registrar, to satisfy the judgement and decree given in **HCCC No. 422 of 1980** by processing and registering individual leases in favour of each Applicant in **HCCC No. 422 of 1980** and by satisfying the decree and costs ordered against the City County of Nairobi in the sum of Kshs. 2,705,876.15 together with interest at 12% from 11/2/1980 until payment in full.

The application was made on the grounds that judgement was delivered against the City Council of Nairobi on 28/2/1991 and a decree was issued on 3/7/1991. That despite service of the decree the 1st Respondent which is the responsible accounting officer had refused to pay the decretal sum of Kshs. 2,705,876.15 together with interest and had failed to process individual leases for Shauri Moyo Estate, Nairobi for land reference number (L.R. No.) 209/20231/32. The Applicants averred that the 1st Respondent had embarked on an alien project called Urban Renewal Housing and Project Management in which it wrongfully intended to appropriate L.R. No. 209/20231/32 which belongs to the Applicants. The Applicants went further to state that there was no appeal or stay of execution of the decree nor was there any order staying the registration of individuals’ titles or payment of the total sum payable to the Applicants.

The application was supported by the affidavit of Wilson Ogwang’ Ouya who deponed that he was the Chairman of Shauri Moyo Ex-Pangani Residents Society and that he had held that position from 1977 to date. He produced a copy of the minutes passed on 6/6/1979 in support of the averment that agreements were entered into for each member of the society to have a tenancy of the suit premises from Nairobi City Council. He averred that when the City Council purported to terminate the tenancies in 1980, the residents filed **HCCC No. 422 of 1980 – Margaret Nyambura and 117 others v City Council of Nairobi**. He attached a copy of the decree issued which the court unfortunately notes does not contain all the pages. He added that despite the Respondents receiving Kshs. 3,938,750 from the Applicants to process their title deeds, they did not comply with the court order. He contended that despite the court restraining the 1st Respondent from evicting the Applicants from their respective premises, the 1st Respondent was on the verge of evicting the Applicants and putting up high-rise buildings based on the Urban Renewal Study for Eastlands, Nairobi 2016 – 2036. He averred that the Respondents were in contempt of a court order and needed to be compelled by an order of mandamus to complete the task as directed by the court. He annexed various correspondences exchanged by different Government agencies on diverse dates between 2001 and February 2015 touching on the suit land and compliance with the court order.

The 1st Respondent filed grounds of opposition dated 17/6/2020 averring that the affidavit in support of the application was sworn by a non-member of the Shauri Moyo Ex-Pangani Residents Society who did not have authority from 115 members to swear that affidavit. Secondly, that the application was statute barred by virtue of Section 4 (1) (c) and 4 (4) of the Limitation of the Actions Act. Thirdly, that the Applicants’ advocate had not sought the court’s leave to come on record for the Applicants after judgement was delivered.

The 1st Respondent filed a replying affidavit which was sworn by Justus Kathenge, the Acting Secretary of the Nairobi City County. He conceded that the Applicants filed **HCCC No. 422 of 1980** but argued that the original Applicants in that case were dead and that the deponent of the affidavit in support of the application brought by the Applicants had not taken out letters of administration to enable him file

the application as the administrator of the estate of one of the Applicants. He deponed that leave to file Judicial Review proceedings could only be granted in clear cases where there is no doubt on the efficacy of the claim and that that was intended to weed out flimsy cases like the present application. He added that no order had been made for the National Land Commission to be added as a party to the proceedings. The 1st Respondent urged the court to dismiss the application for leave.

The Applicants filed submissions and averred that they had been following the Respondents and the responsible government agencies seeking to be given the individual titles but they had met considerable delays and frustrations. Mr. Ouya averred that on 6/5/2012 the Ministry of Lands alienated L.R. No. 209/20231/32 to the 1st Respondent so that it could prepare a deed plan and issue individual titles to each resident. The Applicants blamed vested interest for the delay in the processing of their titles. They averred that the 2nd Respondent had issued a new grant for L.R. No. 209/20231 which was intended to dispossess the Applicants of their entitlement and apply the land towards a different purpose.

The Applicants contended that the Respondents had not led any evidence to prove that the original Applicants were dead while adding that in any event the 1st Respondent had historically dealt with the issue. The Applicants submitted that the decree was a declaration which could not be time barred while adding that time stopped to run every time there was an acknowledgement by the Respondents. They relied on the acknowledgement contained in the letter dated 23/2/2015. They urged that the remedy of Judicial Review was a special jurisdiction while emphasising that **HCCC No. 422 of 1980** was a separate and distinct suit.

The 1st Respondent submitted that the application was supported by an affidavit sworn by a non-member of the Shauri Moyo Ex Pangani Residents Society who did not have authority from the 115 members contrary to Order 1 Rule 13 (1) and (2) as well as Order 24 Rule 3 of the Civil Procedure Rules.

The issue for determination is whether the court should grant the Applicants leave to commence Judicial Review for orders of mandamus. The Applicants annexed an incomplete decree to the application and did not provide any evidence of the existence of the 115 Plaintiffs who were party and are the decree holders in **HCCC No. 422 of 1980**. It may well be that some of those Plaintiffs are dead as the 1st Respondent argued and the administrators of their estates ought to have taken out letters of administration before commencing these proceedings.

Section 4 (4) of the Limitation of Actions Act stipulates that an action may not be brought upon a judgement after the end of 12 years from the date on which the judgement was delivered or where there was an order directing payment of money or the delivery of any property to be made at a certain date, the date of default in making the payment or delivering the property. The Section goes further to stipulate that no arrears of interest in respect of a judgement debt may be recovered after the expiration of 6 years from the date on which the interest became due. The judgement in this court was delivered on 28/2/1991, its enforcement through mandamus as the Applicants seek is not sustainable since the claim is statute barred.

The court declines to grant the Applicants leave to commence judicial review proceedings.

DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF JULY 2021

K. BOR

JUDGE

In the presence of: -

Ms. M. Theuri holding brief for Mr. E. Oduk for the Applicants

Mr. Jared Nyakoe for the 1st Respondent

Mr. V. Owuor- Court Assistant

No appearance for the 2nd and 3rd Respondents