



THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

JUDICIAL REVIEW NO. 2 OF 2019

ANN MUMBI KANYA.....APPLICANT

-VERSUS -

LAND REGISTRAR THIKA.....RESPONDENT

JUDGMENT

1. Pursuant to the leave granted by Ngugi J on 28/2/2018, the ex-parte applicant, Ann Mumbi Kanya, brought a substantive notice of motion dated 7/3/2018, seeking an order of mandamus compelling the respondent to open a new parcel register indicating that she was the proprietor of **Land Parcel Number Ruiru East/juja East Block 2/326**. The motion was supported by the exparte applicant's verifying affidavit sworn on 22/1/2018 and statutory statement of even date.

2. The exparte applicant's case was that she was the registered proprietor of Land Parcel Number Ruiru East/Juja East Block 2/326 measuring 1.300 hectares. Through a letter dated 1/10/2014, addressed to the Government Printer, the respondent acknowledged that the applicant was the registered proprietor of the land and indicated that the parcel register relating to the said land was lost. Further, the respondent intimated his intention to open another parcel register. The respondent had since then refused/failed and/or neglected to open the new parcel register. There was no dispute relating to ownership of the land.

3. On 27/11/2018, Meoli J transferred the suit to Thika Environment and Land Court. The suit was heard before me in the virtual court on 21/10/2021 and now falls for determination.

4. From the affidavit of service sworn by Prof Kiama Wangai on 28/5/2018, it is indicated that both the respondent and the Attorney General were served with the motion. The respondent did not, however, respond to the motion. Further, when the suit came up for hearing on 27/9/2021, Mr Njagi, a litigation counsel in the Environment and Land Section of the Attorney General's Chambers, requested for 7 days within which to take instructions on the motion. The request was granted and a fresh hearing date was set. No response was subsequently filed. Further, there was no attendance on part of the respondent on the day the suit subsequently came up for hearing. Consequently, hearing proceeded ex parte.

5. Urging the court to grant the motion, Prof Wangai submitted that the exparte applicant's case was as set out in the suit papers. He further submitted that there was no one else laying claim to the suit property. He urged the court to grant the relief.

6. I have considered the motion. It is regrettable that the respondent elected not to respond to the motion. Even if there was no one else laying claim to the suit property, given that the respondent was and remains the custodian of land registers, his response would shed light on the circumstances under which the parcel register got lost.

7. In the absence of any objection or response from the respondent, I will grant the notice of motion dated 7/3/2018 in the following terms:

a. An order of mandamus is hereby issued, directing the respondent and/or the relevant land registrar, to open a new land parcel register relating to Land Parcel Number Ruiru East/ Juja East Block 2/326.

b. The due process stipulated under the relevant statutes shall be adhered to while opening the new land register.

c. There shall be no order as to costs of this suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 22ND DAY OF OCTOBER , 2021

B M EBOSO

JUDGE

In the presence of: -

Prof Kiama Wanga for the Ex-parte Applicant

Court Assistant: Lucy Muthoni

B M EBOSO

JUDGE