REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 33 OF 2008

REPUBLIC.....APPLICANT

VS

DIRECTOR OF LAND ADJUDICATION

AND SETTLEMENT.....1ST RESPONDENT

DISTRICT LAND ADJUDICATION AND SETLLEMENT

OFFICER, TIGANIA WEST(MERU NORTH).....2ND RESPONDENT

LAND ADJUDICATION OFFICER URINGU 1

ADJUDICATION SECTION.....3RD RESPONDENT

THE HON. ATTORNEY GENERAL.....4TH RESPONDENT

NCHIRU CATHOLIC CHURCH AND PARISH

THROUGH THE DIOLCESE OF MERU

(CATHOLIC) REGISTERED.....INTERESTED PARTY

AND

DOMICIANO M RATANYA.....EX-PARTE APPLICANT

RULING

Introduction

1. Coming up for determination is the interested party application dated 4th April, 2019 brought under the ***Law Reform Act Cap 26, Article 50 of the Constitution, Land Consolidation Act*** and ***Land Adjudication Act, Land Registration Act*** , the ***Judicature Act*** and all enabling Provisions of the law seeking the following Orders:-

1) THAT this application be certified urgent

2) THAT pending the hearing of this application this court be pleased to stay its orders made on 14th June, 2018.

3) THAT this Honourable Court do review its judgment dated 14th June, 2018 and read the same day and declare the same a mistrial, a nullity and of no effect the same having been overtaken by events and having been read without notice as the law requires.

4) THAT costs of this Application be provided for.

2. In response to the application the Ex-parte Applicant filed a replying affidavit dated 6th May, 2019 and filed on 10th May, 2019.

3. The matter came up for hearing on 31st May, 2019 when parties present agreed to dispose of the application by way of written submissions. Both parties filed their respective submissions. The Interested Party submissions are dated 11th June, 2019 and filed on even date, whereas the Ex-parte Applicant submissions are dated 18th June, 2019 and filed on even date.

Background

4. The genesis of this suit is the Ex-Parte Applicant Judicial Review Application dated 20th June, 2008 seeking the orders of certiorari to quash the decision of the District Land Adjudication Officer of Igembe/Tigania Uringu West at Uringu Adjudication Section, objection No. M832 in respect to Land Parcel No. 1873 issued on 28/11/2007, Prohibition to prohibit the 1st, 2nd and 3rd Respondents from implementing the above decision.

5. This Court upon considering the application and the parties respective submissions therein delivered its ruling on 14th June, 2018, where it allowed the application as sought issuing the above orders sought and further ordered that the matter be referred back to the Land Adjudication Officer for hearing and determination in accordance with the law. The Judgment is the subject of this application

Applicant's case

6. The grounds upon which the applicant's application is based on include, first that the Judgment delivered in this matter was read in the presence of the Ex-parte applicant only without notice being issued to the other parties herein, and that they only became aware of the subject judgment after hearing rumors that the ex-parte applicant was boasting that he had won the case, thus the same is not a judgment in law and should be nullified.

7. Secondly, that the Judgment ought to be reviewed as the land in question was registered on 28th November, 2014 and the Adjudication Officer has no further role to play and the court orders herein have been overtaken by events as there are no adjudication officers in the area in question.

8. Finally that it would be just and fair that the judgment is reviewed.

Ex-Parte Applicant's Response

9. The ex parte applicant in response to the application averred that the same is bad in law, an abuse of the process of the court, and an afterthought, a fishing expedition and misplaced move. He avers that he was in court when the matter was called, as he is a practicing Advocate in Meru and he took the judgment.

10. Additionally, he avers that as a matter of practice notices of the court on delivery of Judgment are usually placed on the Court Notice board, and the same ought not to be direct service and therefore the interested party allegations are baseless and meant to paint the court in bad way.

11. In respect to the court jurisdiction to review its own orders in a judicial review application, the ex parte applicant averred that this court does not have the jurisdiction under Order 45 of the Civil Procedure Rules, 2010 and therefore the instant application is incompetent.

12. Further, he averred that what the applicant is seeking is to have this court sit on appeal of its own judgment, instead of them seeking leave vide an application to appeal out of time.

13. In answer to the applicant allegation that the judgment herein has been overtaken by events, he avers that he ought to be allowed to execute the judgment as the subject adjudication register is still open, and that any suggestion that the subject property had been registered would be contemptuous to the court temporary orders issued herein on 16th June, 2008. And that in any event the judgment is against the Respondents and not the interested party.

Submissions

Applicants Submissions

14. The applicant in their submissions addressed two issues. The first issue is the argument that the judgment delivered by this Court on 14th June, 2018 amounts to a mistrial, irregular and a nullity. In this regard they submitted that the same does not meet the provisions of Order 21 Rule 1 of the Civil Procedure Rules which requires the court to deliver its judgment within 60 days of conclusion of the hearing failure of which written explanation ought to be presented to the Chief Justice, and in this case nothing of the sort happened and in the circumstance they argue that the judgment is irregular and ought not be allowed to stand.

15. The other issue addressed by the applicant is on whether the Judgment herein has been overtaken by events. In this regard, they argue that the orders issued have been overtaken by events. This they argue is because the land in question **Land Reference No. NYAMBENE/URINGU/1873** was effectively registered on 28th November, 2014, a fact they allege the Ex parte applicant herein knew and hid it from the court when they filed their amended motion in 2017.

16. In respect to the first order of certiorari, they submitted that there are no records to be called for, as after registration is complete the same

are sent to the Land Registrar through the Chief Land Registrar after the land is registered. In this they rely in the case of ***Kenya Examination Council ex parte Kemunto Regina Ouru (2009) e K.L.R.***

17. On the second order of prohibition, they submitted the same is also unavailable as the said registration has been completed relying in the case of **Kuria & 30 other Vs Attorney General (2002)e KLR.** And on the third order which they have interpreted it as mandamus, they argue that the same is not available as there is no officer in place to act on the same.

Ex-Parte Applicant's Submissions

18. The ex parte applicant addressed the various issues raised herein by the applicant. The first being on whether the court can declare its own judgment a mistrial or a nullity and in answer to this he submitted that the court is functus officio and there is no ground to support such an allegation arguing that the same is tantamount to this court sitting on its own appeal, and that it imputes fraud and collusion, which cannot be substantiated. In this they rely in the case of ***Serengeti Road Services Vs CRDB Bank Ltd.***

19. Additionally, they submitted that ***Order 45 of the Civil Procedure Rules and the Law Reform Act*** relied by the applicant does not apply to Judicial Review matters. And that judicial review as provided for under *Order* ***53 of the Civil Procedure Rules*** does not envisage the court reviewing its ruling.

20. Further, they submitted that the allegation by the applicant that the judgment was delivered in their absence is just a mere procedural technicality and that it offends ***Article 159 (2) (d) of the Constitution*** which provides that justice should be administered without undue regard to technicalities. In any event they argue that even if the instant application was proper, the applicant has failed to attach any order sought to be reviewed.

21. In respect to the alleged lack of notice for the delivery of the subject judgment, they submitted that the applicant has tendered evidence to the effect that no notice was issued nor was the matter listed in the cause list of the day the judgment was read. In addition, they submitted that since the cited Order 21 Rule 1 as relied by the applicant required the court to deliver judgment promptly or within 60 days, they ought to have approached the court during the intervening period over the same and that they waited too long, that is a period of 9 months before taking action, arguing that they have been indolent and that equity does not aid the indolent party and that the instant application is an attack on the court.

22. Furthermore, they submitted in answer to the applicant's assertion that the judgment and orders issued therein has been overtaken by events. And in this regard they argued that the orders issued were made pursuant to the relief sought by the parties that parties are bound by their pleading and there being no objection filed the judgment is proper and that the Interested Party cannot purport to act for the Respondents herein.

23. On allegation by the applicant that the subject property herein was registered successfully on 28th November, 2014, they submitted that the same is an introduction of new evidence vide submissions, and that no such attention was brought to the court, and that if the same is true then it amounts to contempt of the interim orders issued by this court.

24. Moreover, they submitted that this court did not issue an order of mandamus as submitted by the applicant. And on allegations that the Judicial Review Application was filed out of time, they refuted the same arguing that they filed their application within the stipulated timelines.

25. In sum it is the Ex parte applicant submissions that the instant application has no basis and is meant to delay and derail the execution of the judgment herein and urged the court to dismiss this application with costs.

Issues and Determination

26. I have considered all the foregoing and in my humble view the issues that flow for determination in this matter are as to whether this court has the jurisdiction to review its own orders made herein vide its judgment dated 14th June, 2018 and if yes, what orders should this court make and finally who should bear the costs of the application.

27. On the first issue of whether this court has jurisdiction to review its own orders made on 14th June, 2018 ,the respondent contends that the court has no jurisdiction to review its own orders in Judicial Review proceedings and that the remedy for the applicant is to file an appeal as stipulated in Section 8 and 9 of the Law Reform Act, Orders 43 and 53 of the Civil Procedure Rules. The Applicants in their submissions did not address this critical issue.

28. The Court of Appeal sitting at Nairobi in the case of ***Ransa Company Ltd Vs Manca Francesco & 2 others [2015] e KLR,*** in this regard while agreeing with the position of Justice Wendo where she held that a court sitting on Judicial Review had no jurisdiction to either review or set aside an order of the same court, found that her hands were tied and that the parties ought to file an appeal**. Justice W. Karanja** in this appeal while agreeing with her held in this respect that**:**

> ***"I take the view that the learned Judge was right in her decision. Jurisdiction in Judicial Review matters is like a strait jacket. It has very limited scope and application. It is not amenable to expansion. It is a sui generis jurisdiction, which, unlike civil or even criminal jurisdiction, does not accord a Judge discretion to invoke inherent jurisdiction. That, in my view, is exactly what the learned Judge was saying. The appellant had an opportunity to appeal the Ruling adopting the impugned consent order. He chose not to do so. He also chose to ignore the magnanimous advice of the Court.***
>
> ***Section 8(3) and 5 of the Law Reform Act is clear and bears no repeating. I hold firstly, that a court sitting on Judicial Review is***

dispossessed of inherent jurisdiction and must operate within the confines of Section 8 and 9 of the Law Reform Act and the then Order 53 of the Civil Procedure Rules.

29. **J. W. Mwera** In the same case, while agreeing with **Karanja J**, noted in this regard that:

> ***"Having confined myself to the aspects of this appeal as I have done, my conclusion is that Wendoh, J. could not be faulted for declining to entertain the review application placed before her for lack of jurisdiction. The nature of the appellant's notice of motion before her was brought under the statutory provisions (S.8) and the Civil Procedure Rules (O.53) which are complete, sufficient and operating as a straight jacket. Only final orders of certiorari, mandamus and prohibition, if warranted, can be issued by the High Court under those provisions. And those final orders, whichever the case, can only be subject of appeal to this Court. There is no avenue of review or otherwise in any manner to revisit them in that regard."***

30. Further, the same Court of Appeal, in the ***Nakumatt Holdings Limited Vs Commissioner of Value Added Tax [2011] e KLR*** held that the Superior Court in the matter before the court had residual power to correct its own mistakes. Therefore where a mistake is shown to have been committed which is remediable by the court the same ought to be corrected by the Court in the exercise of its inherent jurisdiction.

31. Looking at the instant application, the applicant has raised issues which are beyond mistakes that can be corrected by this Court by invoking its inherent residual powers.

32. Consequently and guided by the above Court of Appeal decision in ***Ransa Company Ltd Vs Manca Francesco & 2 others [2015] e KLR***, it is apparent to this court that the instant application is brought under the ***Law Reform Act*** cited above, and therefore this court hands are tied and it does not have the jurisdiction to deal with the instant application seeking the review of its orders issued herein on 14th June, 2018, and therefore the only available mechanism is for the applicant to file an appeal in the Court of Appeal.

33. Therefore based on the foregoing, it is my finding that the instant appeal lacks merit and is therefore dismissed with costs.

DATED and SIGNED at Kerugoya this 7th day of February, 2020.

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E.C. CHERONO

ELC JUDGE, KERUGOYA

READ, DELIVERED and SIGNED in open Court at Meru this 10th day of February, 2020.

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L.N. MBUGUA

ELC JUDGE, MERU

In the presence of: