



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT ELDORET**

**MISCELLANEOUS APPLICATION NO. 38 OF 2019**

**LESERU TEBESON FARMERS SOCIETY.....APPLICANT**

**VERSUS**

**THE DIRECTOR OF SURVEYS.....1<sup>ST</sup> RESPONDENT**

**THE REGISTRAR OF TITLES, NAIROBI.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. **Leseru Tebeson Farmers Society**, the applicant, moved the court through the Chamber Summons dated 7<sup>th</sup> October, 2019 seeking for among others leave to apply for certiorari and prohibition; leave so granted to operate as stay and costs. The prayer for leave to apply for the prerogative orders was granted ex-parte on the 7<sup>th</sup> October, 2019. The court also directed that the summons be served upon the Director of Surveys and the Registrar of Titles Nairobi, the Respondents, plus the Attorney General and set the date for inter-partes hearing on the prayer of whether or not the leave granted will operate as stay.

2. The Attorney General filed grounds of opposition dated the 18<sup>th</sup> November 2019, summarized as follows:

(i) Application is misconceived, untenable, bad in law and an abuse of the court process.

(ii) The decision complained off has not been attached and hence the application is a non-starter, defective, incompetent, frivolous and vexatious.

(iii) The orders sought are outside the scope of judicial review and that the application has not met the threshold set out in **Republic Vs Public Procurement Administrative Review Board & 2 Others Ex-parte Sanitam Services (E.A.) Limited (2013) eKLR.**

3. The inter-partes hearing took place on the 18<sup>th</sup> November, 2019 when Mr. Mukabane and Kuria, the learned counsel for the Applicant and Respondents respectively made their oral submissions for and against the prayer.

4. The issue for the court's determination is whether or not the Applicant has made a reasonable case for the leave granted to operate as stay at this stage.

5. The court has carefully considered the grounds on the statutory statement and the depositions in the verifying affidavit filed with the summons, the grounds of opposition, the oral submissions by both learned counsel and come to the following conclusions:

(a) That the Applicant's main complaint as discerned from their statutory statement and verifying affidavit is that the 1<sup>st</sup> Respondent has without giving them a hearing as the owner of L. R. 27206/3 to 4 amended the survey plan F. R. No. 405/96 of their parcels with F. R. No. 636/145 superimposing L. R. No. 27206/5 over their two parcels. The Applicant has annexed copies of the alleged survey plans which contains the decision they have complained of, contrary to the Respondent's Counsel submissions that no decision has been annexed.

(b) That the court having granted leave for the Applicant to apply for the orders of certiorari and prohibition, and noting that the authenticity of the annexed survey plans has not been disputed by the time of the inter-partes hearing, it is only fair and just that the status quo obtaining of the time of filing the application in respect of the said parcels be maintained, pending the hearing and determination of the substantive application.

5. That the court therefore finds merit in the Applicant's prayer for leave to operate as stay and prayer 3 of the chamber summons dated and

filed on the 7<sup>th</sup> October, 2019 is hereby granted.

Orders accordingly.

**Dated and delivered at Eldoret this 5<sup>th</sup> day of February, 2020.**

**S. M. KIBUNJA**

**JUDGE**

Ruling read in open court in the presence of:

Mr. Mukabane for Applicant.

Mr. Kuria and Mr. Tuitoek for Kioko for Respondents.

Christine: Court Assistant