



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC JR NO. 20 OF 2018**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION**

**AND**

**IN THE MATTER OF ARTICLES 40, 47 (1), 48, 50(2), 62, 64 AND 67 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF SECTIONS 5(1), (2) AND 14 (1) OF THE NATIONAL LAND COMMISSION ACT**

**AND**

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT, CAP 26**

**AND**

**IN THE MATTER OF SECTIONS 24 (A), 25 AND 26(1) OF THE LAND REGISTRATION ACT**

**AND**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTIONS ACT, NO 4 OF 2015**

**REPUBLIC.....APPLICANT**

**VERSUS**

**NATIONAL LAND COMMISSION.....1<sup>ST</sup> RESPONDENT**

**CHIEF LAND REGISTRAR.....2<sup>ND</sup> RESPONDENT**

**NAIROBI CITY COUNTY.....3<sup>RD</sup> RESPONDENT**

**GIDJOY INVESTMENTS LIMITED.....EX PARTE APPLICANT**

**JUDGEMENT**

1. The *Ex parte* Applicant filed the Notice of Motion on 11/4/2018 seeking an order of certiorari to bring into this court the public notice appearing at page 40 of the *Daily Nation* of 14/1/2016, proceedings, directions and any orders made by the National Land Commission (NLC) based on the Notice touching on the title, ownership, possession or proprietary rights of the *Ex parte* Applicant, Gidjoy Investments Limited with regard to the parcels of land known as Nairobi/Block 82/7813, 82/7816, 82/7817, 82/7818, 82/7819, 82/7820, 82/7821, 82/7822, 82/7823, 82/7824, 82/7825, 82/7826, 82/7827, 82/7828, 82/7829, 82/7831, 82/7832, 82/7833, 82/7834, 82/7835, 82/7836, 82/7837, 82/7838, 82/7839, 82/7841, 82/7842, 82/7844, 82/7845, 82/7846, 82/7847, 82/7849, 82/7850, 82/7851, 82/7852, 82/7853, 82/7854 and 82/7855 (“the Suit Properties”).

2. The *Ex parte* Applicant also sought an order of prohibition to restrain the Respondents from continuing with investigations, adjudication, determination or inquiry of any issues with regard to the title, ownership, possession and proprietary rights of the *Ex parte* Applicant with

regard to the Suit Properties. It further sought an order of certiorari to quash any ongoing proceedings, directions and orders issued and any concluded deliberations, proceedings, decisions, gazettment, determinations and directions affecting the *Ex parte* Applicant's title to the Suit Properties. In addition, the *Ex parte* Applicant sought an order of certiorari to quash any decision or other action by the Respondents directing the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to make any entry on the register of lands or other records whose import was to revoke the *Ex parte* Applicant's title over the Suit Properties.

3. The application was made on the grounds that NLC had no jurisdiction to review titles over land, its mandate having expired on 2/5/2017. The *Ex parte* Applicant claimed that it purchased the Suit Properties from Continental Developers Limited without notice of any defect in the titles. The *Ex parte* Applicant averred that NLC invited it to appear for public hearings for the review of the grant of public land in a notice published in a newspaper on 14/1/2016. The *Ex parte* Applicant contended that the Suit Properties did not constitute public land.

4. The suit was supported by the affidavit sworn by the *Ex parte* Applicant's Operations Manager, Mr. Mark Munge filed in court on 26/3/2018. He deponed that the *Ex parte* Applicant was the registered proprietor of the Suit Properties and attached copies of the certificates of lease issued to it over the Suit Properties. He averred that NLC invited the *Ex parte* Applicant to appear for public hearings for the review of grants of public land in Nairobi and that the reviews were actually carried out.

5. He alluded to some illegal subdivision of the Suit Properties and the complaints the *Ex parte* Applicant made to NLC regarding those subdivisions. He added that the Suit Properties had been invaded by trespassers and that armed gangs acting on behalf of self-help groups had interfered with the Suit Properties. He added that NLC's mandate to review grants pursuant to Section 14 of the NLC Act ended on 1/5/2017 and that NLC failed to deliver its determination after the *Ex parte* Applicant attended the public hearings and complied with NLC's directions.

6. In the replying affidavit sworn by Abigail Mbagaya, who was the Vice-chairperson of NLC filed in court on 17/5/2018 she deponed that NLC received a complaint from the Governor of Nairobi County requesting NLC to review the propriety of the grant over Nairobi Block 82/7333 on the basis that it was public land that it was illegally alienated to the *Ex parte* Applicant. NLC caused a notice to be published in the daily newspapers in accordance with Section 14 of the National Land Commission Act inviting interested parties to attend the public hearing. Owing to the large number of complaints NLC received countrywide, it was not able to make a determination on the Suit Properties and its mandate which was limited to five years came to an end on 2/5/2017. She averred that no determination had been approved, adopted or ratified by a meeting of the committee for review of grants and disposition of the Commission.

7. Ms. Mbagaya added that no decision or determination could be made by NLC since the dispute was before the court which had granted orders for the leave the court granted to operate as a stay. She contended that there was no decision or determination made by NLC capable of being challenged through prerogative orders or which could be upheld by the court. She added that NLC was pursuing Parliament to extend its mandate to review grants under Section 14 of the National Land Commission Act to enable NLC receive fresh complaints and finalise existing complaints. She was categorical that NLC had not rendered any determination on the Suit Properties.

8. Parties filed submissions which the court has considered. The Attorney General submitted that an order of prohibition cannot issue since NLC's mandate to review grants over public land lapsed in 2017. The Attorney General also submitted that there were multiple suits touching on the Suit Properties pending before the Environment and Land Court and the High Court, Constitutional and Human Rights Division including **ELC No. 79 of 2018- Alexander Hoops and others v Honourable Attorney General; Petition 92 of 2018 Soweva Self Help Group v National Land Commission and Gidjoy Investments Limited & 2 others** as interested parties, **ELC Civil Suit No. 301 of 2018 Gidjoy Investments Limited v Zero Point Construction Company Limited and 69 Others**; and **ELC Judicial Review No. 81 of 2018 Gidjoy Investments Limited v National Land Commission**.

9. The Attorney General surmised that in the instant case, seeking judicial review orders was not the best remedy available to the parties, as the issues are pending for determination in the multiple suits pending before those respective courts. The AG contended that the remedy to the issues surrounding the Suit Properties could not be effectively determined through this judicial review application, but rather in the substantive suits pending before the courts.

10. Mr. Kariuki submitted that the *Ex parte* Applicant was challenging the jurisdiction of NLC following the appearance of parties before it and the hearing it conducted. He conceded that there was no determination made by NLC but maintained that the *Ex parte* Applicant was seeking the orders set out in the substantive motion.

11. Mr. Wahome submitted that NLC's mandate to review grants and dispositions of public land to establish their propriety expired on 1/5/2017. He submitted that NLC did not make a determination regarding the legality of the Suit Properties and added that there were no pending proceedings pending before NLC. He contended that the judicial review application was an abuse of the court process and that there was no decision before the court capable of being quashed.

12. Miss Kabita who appeared for the 2<sup>nd</sup> Interested Party associated herself with Mr. Wahome's submissions but added that NLC made a determination on 14/11/2016 which was gazetted on 9/11/2018. Ms. Kikanu who represented the Nairobi City County submitted that the application sought orders regarding the ownership of the Suit Properties which ought to be determined in an ordinary suit and added that these proceedings were the wrong forum for such a determination to be made.

13. Mr. George Gilbert who appeared for the 1<sup>st</sup> Interested Party informed the court that he was unable to proceed with the hearing because the matter was coming up for mention for purposes of taking directions. He protested against the hearing and stated that he had been ambushed.

14. Mr. Kamau who appeared on behalf of the Attorney General submitted that by the time this judicial review proceedings were filed on 11/04/2018, there was no decision capable of being quashed in terms of the prayers sought. He urged the court to dismiss the suit. Mr. Kariuki for the Applicant conceded that the issue of ownership for the Suit Properties can be determined by the court in ELC No. 301 of

2018.

15. The issue for determination is whether the court should grant the orders of certiorari and prohibition sought by the *Ex parte* Applicant. It is common ground that the mandate of NLC to review grants of public land lapsed in May 2017. The *Ex parte* Applicant conceded that NLC did not make a decision regarding the propriety of its titles over the Suit Properties. That being the case there is no basis for this court to grant the orders sought by the *Ex parte* Applicant as there is no decision capable of being quashed by the court.

16. The court notes that the parties in this judicial review matter are also parties in **ELC No. 301 of 2018** filed by the *Ex parte* Applicant claiming ownership of the Suit Properties. There are other suits filed over the Suit Properties in the High Court. When parties file a myriad of claims in respect of the same subject matter, it militates against the overriding objective of facilitating the just, expeditious, proportionate and affordable resolution of civil matters. The courts cannot dispose of such matters expeditiously as envisaged under the Civil Procedure Act and the Constitution.

17. The application dated 11/4/2018 is dismissed. Each party will bear its costs for the suit. The dispute over the ownership of the Suit Properties will be determined by the court in **ELC No. 301 of 2018- Gidjoy Investments Limited v Zeropoint Construction Company Limited and 69 Others**.

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

**K.BOR**

**JUDGE**

**In the presence of:-**

Ms. J. Machinda for the 1<sup>st</sup> Respondent

Mr. S. Musyoki- Court Assistant

No appearance for the *Ex parte* Applicant, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents