



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA JUDICIAL REVIEW NO 13 OF 2017

IN THE MATTER OF:

AN APPLICATION BY KCB BANK KENYA LIMITED (THE APPLICANT) FOR ORDERS

OF MANDAMUS DIRECTED TO THE COLLECTOR OF STAMP DUTY

(THE 1ST RESPONDENT), CHUKA DIVISION LAND CONTROL BOARD

(THE 2ND RESPONDENT) AND THE LAND REGISTRAR CHUKA

(THE 3RD RESPONDENT);

AND

IN THE MATTER OF:

ORDER 53, RULE 3 OF THE CIVIL PROCEDURE RULES, 2010 (CAP. 21),

AND SECTIONS 8 & 9 OF THE LAW REFORM ACT (CAP.26), LAWS OF KENYA;

AND

IN THE MATTER OF

THE NATIONAL & GRINDLAYS BANK (APPORTIONMENT) ACT (CAP 488 D), LAWS OF KENYA;

AND

IN THE MATTER OF:

SECTION 65 & 108 OF THE LAND REGISTRATION ACT, 2012

KCB BANK KENYA LIMITED.....APPLICANT

VERSUS

THE COLLECTOR OF STAMP DUTY.....1ST RESPONDENT

CHUKA LAND CONTROL BOARD.....2ND RESPONDENT

THE LAND REGISTRAR CHUKA.....3RD RESPONDENT

RULING

1. This application is dated 27th November, 2019 and seeks orders:

1. That this application be certified urgent and service of the same be dispensed with in the first instance.
2. That this honourable court be pleased to vary the orders of this court issued on 3rd April, 2017, to include the orders as follows:
 - a) That an order of mandamus does issue to compel the collector of stamp duty (1st Respondent) to issue an exemption notice under section 11 of the National & Grindlays Bank (Appointment Act (CAP 488D) Laws of Kenya to the Applicant exempting it from paying stamp duty for the transfer of Title Number Karingani/Ndagani/610 from National and Grindlays Bank to the applicant.
 - b) That the Deputy Registrar of this honourable court be directed to execute all necessary documents on behalf of National and Grindlays Bank in relation to the transfer of the property title number Karingani/Ndagani/610 to the ex-parte applicant
3. That this honourable court be pleased to issue any other orders it deems necessary and just.
4. That costs for the application be provided for.

2. The application has the following grounds:

1. That the ex-parte applicant was granted leave to institute judicial review proceedings by Hon. Justice P. M. Njoroge on 19th September, 2016 wherein the ex-parte applicant sought the following orders;

a) That an order of Mandamus does issue to compel the collector of stamp duty (1st respondent) to issue an exemption notice to the applicant exempting it from paying stamp duty for the transfer of title number Karingani/Ndagani/610 from National and Grindlays Bank to the applicant.

b) That an order of mandamus does issue to compel the Chuka Land Control Board (2nd Respondent) to grant consent for the transfer of the title number Karingani/Ndagani/610 from National and Grindlays Bank to the applicant out of time and to dispense with the requirement that the owner or authorised agent/s to execute statutory consent form.

c) That an order of Mandamus does issue to compel the Chuka Land Registrar (3rd Respondent) to effect the transfer of the title number Karingani/Ndagani/610 in favour of the applicant upon compliance with the provisions of the Stamp Duty Act Cap 480 Laws of Kenya and Land Control Act Cap 302 Laws of Kenya.

d) The costs of the application be borne by the respondents.

2. That in light with the aforesaid application, this honourable court upon hearing and considering the ex-parte applicant's application issued the following orders;

a) That an order of Mandamus be and is hereby issued compelling the collector of Stamp Duty (1st Respondent) to issue an exemption notice to the applicant exempting it from paying stamp duty for the transfer of title number Karingani/Ndagani/610 from National and Grindlays Bank to the applicant.

b) That an order of mandamus be and is hereby issued compelling the Chuka Land Control Board (2nd respondent) to grant a consent for the transfer of title number Karingani/Ndagani/610 from National and Grindlays Bank to the applicant out of time and to dispense with the requirement that the owner or authorised agent/s to execute the statutory consent form.

c) That an order of mandamus be and is hereby issued compelling the Chuka Land Registrar (3rd Respondent) to effect the transfer of the title number Karingani/Ndagani/610 in favour of the applicant upon compliance with the provisions of the Stamp Duty Act Cap 480 and Land Control Act Cap 302 Laws of Kenya.

d) That no costs are awarded.

3. That in light of the above-mentioned orders the ex-parte applicant commenced with the formal process to have the property known as title number Karingani/Ndagani/610 exempted from stamp duty and transferred in its favour, however, in accordance with the provisions of the land Registration Act No. 6 of 2012, that the legal right in property can only be transferred by the proprietor.

4. That from the foregoing, the proprietor of the property has ceased to exist by an operation of the law, therefore, it is in the interest of justice that the orders sought herein can be granted to aid the legal completion of the transaction to transfer the property to the ex-parte applicant.

5. That this honourable court has been empowered under the provisions of Article 165(7) of the Constitution of Kenya, 2010, with the authority to supervise any person or body that has a quasi-judicial authority, which power is exercised by the 3rd respondent.

6. That the 3rd respondent is legally mandated with authority of custodian of records pertaining to land and the registration of any interest inland within the Republic as envisaged in Section 14 of the Land Registration Act No. 3 of 2012.

7. That to mitigate the lack thereof for sufficient provisions of the law to allow for the transaction to be concluded within the provisions of the law, it would be prudent that this honourable court provide directions in the nature of the orders sought hereinabove.

8. That it is in the interest of justice and fairness that the orders sought herein are granted.

3. The application is buttressed by the affidavit of Patrick Gunyali Mbagaya which states:

I, PATRICK GUNYALI MBAGAYA, of Post Office Box Number 48400-00100 Nairobi, in the Republic of Kenya, do hereby make oath and state as follows:-

1. That I am an adult male of sound mind, being well versed with the matter herein and duly authorised by the applicant herein, thus, competent to swear this affidavit. Annexed herewith and marked 'PGN-1' is a copy of the minutes of the board of the applicant appointing and authorising the deponent to depone affidavits on behalf of the ex-parte applicant.

2. That the ex-parte applicant was granted leave to institute judicial review proceedings by Honourable Justice P. M Njoroge on 19th September, 2016, wherein the ex-parte applicant sought the following orders;

a) That an order of mandamus does issue to compel the collector of Stamp Duty (1st Respondent) to issue an exemption notice to the applicant exempting it from paying stamp duty for the transfer of title number Karingani/Ndagani/610 from National and Grindlays Bank to the Applicant.

b) That an order of Mandamus does issue to compel the Chuka Land Control Board (2nd Respondent) to grant consent for the transfer of the title number Karingani/Ndagani/610 from National and Grindlays Bank to the applicant out of time and to dispense with the requirement that the owner or authorised agent/s to execute statutory consent form.

c) That an order of Mandamus does issue to compel the Chuka Land Registrar (3rd Respondent) to effect the transfer of the title number Karingani/Ndagani/610 in favour of the applicant upon compliance with the provisions of the Stamp Duty Act Cap 480 Laws of Kenya and Land Control Act Cap 302 Laws of Kenya.

d) The costs of the application be borne by the respondents.

3. That in light with the aforesaid application, this honourable court upon hearing and considering the ex-parte applicant's application issued the following orders;

a) That an order of Mandamus be and is hereby issued compelling the collector of stamp duty (1st Respondent) to issue an exemption notice to the applicant exempting it from paying stamp duty for the transfer of title number Karingani/Ndagani/610 from National and Grindways Bank to the applicant.

b) That an order of Mandamus be and is hereby issued to compelling the Chuka Land Control Board (2nd Respondent) to grant a consent for the transfer of title number Karingani/Ndagani/610 from National and Grindlays Bank to the Applicant out of time and to dispense with the requirement that the owner or authorised agent/s to execute the statutory consent form.

c) That an order of Mandamus does issue to compel the Chuka Land Registrar (3rd Respondent) to effect the transfer of the title number Karingani/Ndagani/610 in favour of the applicant upon compliance with the provisions of the stamp duty Act cap 480 Laws of Kenya and Land Control Act Cap 302 Laws of Kenya.

d) The costs of the application be borne by the respondents.

Annexed herewith and marked 'PGN-2' is a copy of the order of the court issued on 3rd April, 2017 by Honourable Justice P. M. Njoroge.

4. That in light of the above-mentioned orders the ex-parte applicant commenced with the transaction to have the property known as title number Karingani/Ndagani/610 transferred in its favour, however, in accordance with the provisions of the Land Registration Act No. 6 of 2012, that the legal right in property can only be transferred by the proprietor.

5. That from the foregoing, the proprietor of the property has ceased to exist by an operation of the law vide the enactment of The National & Grindlays Bank (Appointment) Act (Cap 488D), and in accordance with the provisions of the Act the ex-parte applicant was to acquire the interest in the land known as title number Karingani/Ndagani/610 from the registered proprietor.

6. That this honourable court has been empowered under the provisions of Article 165(7) of the Constitution of Kenya, 2010, has the authority to supervise any person or body that has quasi-judicial authority.

7. That presently, the transfer cannot be effected despite the present court orders, as the persons with legal authority to execute the transfers no longer exists, thus, to mitigate the present conundrum, the orders sought herein would enable completion of the process.

8. That I wish for the prayers sought for in the Notice of Motion Application filed herewith should be granted to ensure justice is met.

9. That what is deponed herin is true to the best of my knowledge and belief.

4. There is evidence on record that despite proper service having been effected, the respondents did not, without any explanation whatsoever, come to court for the hearing of this application.

5. Miss Muthoni, holding brief for Mr Gikera, the applicant's advocate asked the court to allow the application as it is meant to facilitate the implementation of this court's judgment delivered on **3rd April, 2017**.

6. Having considered the totality of the circumstances surrounding this matter, I am inclined to allow the application and the following orders are hereby issued:

a) An order of Mandamus is hereby issued compelling the Collector of Stamp Duty (1st Respondent) to issue an exemption Notice Under Section 11 of the National & Gindlays Bank (Apportionment Act (Cap 488D) Laws of Kenya to the Applicant exempting it from paying Stamp Duty for the transfer of Title Number Karingani/Ndagani/610 from National and Grindlays Bank to the applicant.

b) The Deputy Registrar of this court is directed to execute all necessary documents on behalf of National and Grindlays Bank in relation to the transfer of the property title number Karingani/Ndagani/610 to Kenya Commercial Bank Limited (the applicant).

c) Costs are awarded to the applicant.

Delivered in open court at Chuka this 4th day of February, 2020 in the presence of:

CA: Ndegwa

Miss Muthoni h/b Eric Gikera for the Applicant

AG absent for the Respondent

P. M. NJOROGE,

JUDGE.