



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**MISC CIVIL APPLICATION NO. 22 OF 2016 (JR)**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR THE JUDICIAL REVIEW ORDERS OF MANDAMUS**

**AND**

**IN THE MATTER OF SECTION 8 & 9 OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA AND ORDER 53 OF THE CIVIL PROCEDURE RULES**

**AND**

**IN THE MATTER OF LAND PLOT NO. 293 NKUBU MARKET**

**AND**

**IN THE MATTER OF NKUBU PMCC NO. 88 OF 2007**

**BETWEEN**

**MONICA KAJUJU AND**

**JOHN MUTEA RINGERA.....EX PARTE APPLICANTS**

**VERSUS**

**PRINCIPAL SECRETARY MINISTRY**

**OF INTERIOR & COORDINATION**

**OF NATIONAL GOVERNMENT.....1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. Vide this court's ruling of 20.3.2019, the Ex-parte Applicants were granted leave to apply for orders of mandamus against the respondents herein where by the substantive Motion was subsequently filed on 10.4.2019. The Ex-parte Applicants are seeking an order of mandamus against the respondents compelling them to comply with the court decree dated 13/6/2012 issued in Nkubu PMCC No. 88 of 2007 and that in default, the Respondents be committed to Civil jail until full compliance with the said decree in full, within 30 days from the date of delivery of the court's ruling. They also seek costs of the suit.

2. The application is premised on the grounds set out in the statement of facts and on the affidavit verifying the facts of Monica Kajuju who stated that she owns plot No. 293 Nkubu Market jointly with her co-Exparte applicant. In the year 2007 the administration police occupied their plot without their authority or consent. This prompted them to file a case, Nkubu CMCC No. 88 of 2007 which was heard and determined in their favour. It is now 4 years since the decree was issued and the respondents have refused to comply with the same.

3. The Ex-parte Applicants contend that there is no application which was ever made by the respondents for review and/or appeal against the Judgment of the trial magistrate. They further argue that these are Judicial proceedings which should not be concerned with the merits of the decision. Instead, the proceedings are only concerned with the procedure and legality of the decision making process.

4. The Exparte applicants argued that their efforts to implement the decree issued in Nkubu PMCC no. 88 of 2007 has been resisted by police officers and therefore, they have moved this court to compel the satisfaction of a judgment already decreed by a competent court. In support of their arguments, the Ex-parte Applicants have relied on the following authorities; **Republic vs. Kenya National Examination Council Ex-parte Gathenji & Others ,Civil Appeal No,234 of 1996; Republic vs. Town Clerk of Webuye County Council & Another (2014) eKLR; Republic vs. Kenya Revenue Authority Ex-parte Yaya Towers Limited (2003) eKLR.**

5. The application was opposed via the replying affidavit of Daniel Mugo Gichiri, the Deputy County commissioner Imenti South Sub County. He avers that the said judgment and decree was obtained through misrepresentation of facts. The said plot 293 Nkubu Market does not exist in the records at Meru Central Land registry and neither does it exist on the ground. The court at Nkubu PMCC 88 of 2007 additionally dismissed two applications by the applicant who were trying to execute the judgment and decree.

6. The respondents argued that the exparte applicants have not met the criteria to warrant the issuance of orders of Mandamus.

7. I have carefully perused the application, affidavits, submissions and the record in its entirety and the issue to be determined is whether to grant an order of mandamus compelling the respondents to comply with the court decree dated 13/6/2012 issued in Nkubu PMCC No. 88 of 2007.

8. In the case of **Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd Civil Appeal No. 185 of 2001**, the Court of Appeal re-emphasized the parameters of judicial review by stating as follows:

*“Judicial review is concerned with the decision making process, not with the merits of the decision itself: the Court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters...The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself such as whether there was or there was not sufficient evidence to support the decision (Emphasize added)....”*

9. What is not in dispute herein is that the case PMCC no. 88 of 2007 was decided in favor of the applicants. The gist of the respondents’ arguments are captured in paragraph 4 & 5 of the Replying affidavit of Daniel Mugo Gichiri as follows;

*“That the said judgment and decree were obtained through misrepresentation of facts where they alleged they were legal owners of plot 293 Nkubu market and that the said plot number 293 Nkubu market does not exist in the records at the Meru Central Land Registry neither does it exist on the ground”.*

10. It is clear that the respondents are challenging the decision of the trial magistrate. This being a Judicial Review matter, the court cannot purport to cloth itself with appellate attires in so far as the decision of the magistrate is concerned. The merits of the decision can only be challenged by way of a review or an appeal and not through this forum.

11. This is a case whereby the Respondents are very much aware of the decree of which they never lodged an appeal or a review. It is the mandate and the prerogative of this court to ensure that the decree holder in the magistrate’s court judgment is not left without a remedy. In the circumstances, I find that the Judicial Review prayers sought for here in are merited.

## 12. Final orders

**i. A Judicial Review order of mandamus is hereby issued against the Rrespondents compelling them to comply with the court decree dated 13/6/2012 issued in Nkubu PMCC No. 88 of 2007.**

**ii. In default of clause i above, the Respondents are to be committed to Civil jail until full compliance with the said decree.**

**iii. In light of the prevailing health situation of Covid 19 pandemic, the compliance period is pegged at 4 months.**

**iv. The Respondents are condemned to pay costs of the suit.**

**DATED, SIGNED AND DELIVERED AT MERU THIS 20<sup>TH</sup> DAY OF MAY, 2020**

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**

**ORDER**

The date of delivery of this ruling was given to the parties at the conclusion of the hearing and by a fresh notice by the Deputy Registrar. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17<sup>th</sup> March, 2020 and published in the Kenya Gazette of 17<sup>th</sup> April 2020 as Gazette Notice no.3137, this ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court.

**HON. LUCY N. MBUGUA**

**ELC JUDGE**