



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU

J.R. E.L.C. NO 49 OF 2014

ELTON NJUE & 3 OTHERS.....APPLICANTS

VERSUS

DISTRICT LANDS REGISTRAR, EMBU & ANOTHER.....RESPONDENTS

AND

BONIFACE NJERU NJUE & 71 OTHERS.....INTERESTED PARTIES

RULING

Introduction

This is an *ex-parte* application brought by chamber summons under Order 53 rule 1 of the 2010 Civil Procedure Rules Section 1A, 1B, 3 and 3A of the Civil Procedure Act, Sections 13, 17 and 19 of the Environment and Land Court Act together with other enabling laws. The *ex-parte* chamber summons is supported by an affidavit sworn by Robert Njue Ezekia dated 19th December, 2014.

The Case for the Applicants:

According to the affidavit of the deponent who has been authorized to swear this affidavit by the 80 persons, who are beneficiaries of the first registration of the land parcels which are annexed to the affidavit marked "RNE1". He states that there were appeals to the Minister of Lands followed by a further appeal to the Court of Appeal.

During the pendency of the appeal, restrictions were put on the suit lands on the authority of a letter dated 19th May, 1989. This letter was written by the Chief Land Registrar (2nd respondent) and addressed to the District Land Registrar Embu, in which the District Land Registrar was instructed to remove the restrictions from the suit parcels of land.

Instead of removing the restrictions, the second respondent proceeded to remove from the register the names of the applicants and replaced them with those of the 1st to 71 interested parties. According to counsel for the applicants this was not justified and was an arbitrary and oppressive act. Finally, he says that the letter dated 18th December, 1997 upon which the names of the applicants were replaced with new persons does not exist. Both the two respondents are public officers and were required to act according to the law.

In support of the *ex-parte* chamber summons, counsel for the applicants has submitted that the actions of the two respondents dispossessed the applicants of their parcels of land. He further submits that the

applicants are seeking to be restored to their respective parcels of land. In order to do so, the register has to be rectified. This is the reason why they have sought the *ex-parte* leave to file for an order of mandamus.

The Applicable Law:

The law that applies in this application is set out in ***Order 53 of the 2010 Civil Procedure Rules***. These rules require that an application for an order of mandamus must be preceded with an *ex-parte* application for leave by way of chamber summons. This procedure has been approved judicially in ***Judicial Commission of inquiry into the Goldenberg Affair and 3 others v Kilach (2003) KLR 249***. According to that case, the only procedure provided for under ***Order 53 rules 1 and 2*** is that the application shall be made *ex-parte* to a judge in chambers in respect of applications for leave to apply for prerogative orders (mandamus, certiorari and prohibition).

Issues for Determination:

In the light of the affidavit evidence and the applicable law, the following are the issues for determination:

1. Whether or not the applicants have met the evidentiary threshold for the grant of leave to apply for an order of mandamus.
2. Whether or not the *ex-parte* applicants have complied with the requirements of Order 53 rules 1 and 2.

Evaluation of the Affidavit Evidence, findings and the Law:

I have considered the affidavit evidence, and the applicable law together with the submissions of the counsel for the applicants. I find that they have met the evidentiary threshold for the grant of an order to apply for an order of mandamus. It is clear from the affidavit that they were entitled to be registered on first registration as the owners of the suit parcels of land by the first and second respondents.

Instead, they ended up being dis-possessed for reasons which are not clear. Additionally, I find that they have complied with the requirements of Order 53 rules 1 and 2 as approved by the case of ***Judicial Commission of inquiry into the Goldenberg Affair and 3 others v Kilach, supra***

Verdict and Disposal Order:

In the light of the foregoing matters, I hereby grant the following orders:

1. Leave to file for an order of mandamus in terms of prayer 1 of the chamber summons is hereby granted.
2. The *ex-parte* applicants are required to serve the respondents and the interested parties within 21 days.
3. Costs of the application shall be costs in cause.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this.. **11th** ... day of **March,..2015**

In the absence of counsel for the Applicants.

Court clerk Mr Muriithi

J.M. BWONWONGA

JUDGE