



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

JR CASE NO. 34 OF 2018

A A KAWIR TRANSPORTERS LIMITED.....APPLICANT

VERSUS

THE CHIEF LAND REGISTRAR.....RESPONDENT

NCHIRU STORES COMPANY LIMITED.....1ST INTERESTED PARTY

TILE AND CARPET CENTRE LIMITED.....2ND INTERESTED PARTY

EXCEL CHEMICALS LIMITED.....3RD INTERESTED PARTY

NATIONAL LAND COMMISSION.....4TH INTERESTED PARTY

JUDGMENT

1. The dispute in this judicial review motion relates to **Land Reference Number 209/11803/4** comprised in **Grant No IR 74252 (the suit property)** currently registered in the name of **Excel Chemicals Limited (3rd Interested Party)**. A brief summary of the background to the dispute is that in 2016, the National Land Commission (**the 4th Interested Party**) received a complaint from M/s A A Kawir Transporters Limited (**the Ex-parte Applicant**) requesting for a review of the Grant. The gist of the complaint was that the *ex-parte* applicant alleged that they were the original allottee of the suit property pursuant to an allotment made to them by the defunct City Council of Nairobi in 1992. Subsequent to the allotment, the Commissioner of Lands allocated the same piece of land to **M/s Nchiru Stores Company Limited (1st Interested Party)** who in turn sold it to **Tile and Carpet Centre Limited (the 2nd Interested Party)**. The 2nd interested party in turn sold the land to the 3rd interested party (**Excel Chemicals Limited**).

2. The Commission conducted hearings and subsequently rendered a determination dated 20/12/2016 in which it directed the **Chief Land Registrar (the Respondent)** to revoke the Grant (IR 74251) held by the 3rd interested party and issue a lease in respect of the suit property to the *ex-parte* applicant.

3. It does appear from the evidential materials placed before court that the Chief Land Registrar did not comply with the determination and award of the National Land Commission. Consequently, the *ex-parte* applicant initiated the present judicial review proceedings in June 2018, seeking an order of *mandamus* compelling the Chief Land Registrar to act on the determination and award.

4. The motion was canvassed before me and now falls for determination. I have considered the motion and the responses thereto, [both physical and those in the e-filing docket] relating to this application. I have also considered the parties' respective submissions and case law cited.

5. What emerges from the evidential materials placed before court is that on or about 20/2/2020, the 3rd interested party filed **Nairobi ELC Misc Application No 14 of 2020; Excel Chemicals Limited v A A Kawir Transporters Limited**, seeking among other prayers: (i) an order extending time within which to file an appeal against the decision of the National Land Commission; and (ii) an order of stay of execution of the decision of the National Land Commission. The e-case docket relating to the said suit indicates that the case is listed for disposal directions before **Bor J** on **10/11/2020**.

6. Against the above background, this court is invited to exercise judicial review jurisdiction and issue an order of *mandamus* compelling the Chief Land Registrar to implement the determination and award of the National Land Commission.

7. The Court of Appeal in **Makupa Transit Shade Limited & another v Kenya Ports Authority & another [2015] eKLR** outlined the following principle upon which jurisdiction to issue an order of *mandamus* is exercised:

“The general rule is that the issuance of mandamus is limited to where there is specific legal right and there is no specific legal remedy for enforcing it or the alternative remedy is less convenient, beneficial and effectualIts scope against public bodies is limited to performance of a public duty where statute imposes a clear and unqualified duty to do that act. However, if the duty is discretionary as to its implementation, then madamus cannot dictate the specific way the discretion will be exercised”.

8. From the evidential materials placed before court, it does emerge that the 3rd interested party, in an endeavour to exercise and exhaust its right of appeal under **Regulation 30** of the **National Land Commission (Review of Grants and Dispositions of Public Land) Regulations**, initiated **Nairobi ELC Miscellaneous Application No 14 of 2020**. The said suit is pending disposal before Bor J. In my view, it would be premature and inappropriate to ignore the proceedings now pending before Bor J and proceed to exercise jurisdiction to issue an order of mandamus at this point. The proper thing to do is to let the 3rd interested party prosecute the application pending before Bor J before the merits of a plea for an order of mandamus are considered.

9. It is, however, not lost to this court that, the said proceedings were initiated by the 3rd interested party about one year from the date of service of the present motion and more than 3 years from the date of the decision by the National Land Commission. In the circumstances, the 3rd Interested Party shall bear costs of the present suit.

10. The net result is that the court finds that, in view of the fact that Nairobi **ELC Miscellaneous Application No 14 of 2020**, through which the applicant seeks extension of time within which to exercise its right of appeal, is pending disposal before Bor J, it would be premature and inappropriate to exercise jurisdiction at this point to grant an order of mandamus. Consequently, the substantive merits of the plea for an order of mandamus shall not be considered at this point. The *ex-parte* applicant shall, however, be at liberty to initiate fresh judicial review proceedings upon disposal of **Nairobi ELC Miscellaneous Application No 14 of 2020** should it become necessary. The 3rd interested party, Excel Chemicals Limited, shall bear costs of this suit.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 30TH DAY OF OCTOBER 2020.

B M EBOSO

JUDGE

In the Presence of: -

Mr Kamau for the Respondent

Mr Mbutia for the Interested Party

Mr Murunga for the Applicant

Ms Nzuka holding brief for Mr Mwangi for the 2nd Interested Party

Court Clerk - Halima

Note

This Judgment was supposed to be delivered on 29/10/2020. This was not possible because I was assigned duties outside the Station.

B M EBOSO

JUDGE