



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT GARISSA

JUDICIAL REVIEW APPLICATION NO. 2 OF 2020

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF MANDAMUS DIRECTED AT THE MINISTRY OF LANDS AND URBAN PLANNING

AND

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF MANDAMUS DIRECTED AT THE GARISSA COUNTY GOVERNMENT MINISTRY OF LANDS AND URBAN DEVELOPMENT

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015

AND IN THE MATTER OF THE LAW REFORM ACT, CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF THE LAND ACT OF 2012 AND THE LAND REGISTRATION ACT OF 2012

BETWEEN

RABAI YUSSUF MOHAMED.....APPLICANT

VERSUS

REGISTRAR, MINISTRY OF LANDS AND

URBAN PLANNING.....1ST RESPONDENT

AND

CHIEF OFFICER, GARISSA COUNTY GOVERNMENT

MINISTRY OF LANDS & URBAN DEVELOPMENT.....2ND RESPONDENT

ZEINAB DAGANE GALAL.....3RD RESPONDENT

RULING

INTRODUCTION

1. The applicant commenced this Judicial Review proceedings by an Exparte chamber summons application dated 26th February, 2020 where she sought inter alia leave to apply for an order of mandamus to compel the 1st and 2nd respondents to register her as the rightful owner of the plot in question.
2. When the application which was brought under certificate of urgency was placed before the duty court, the same was certified urgent and leave was granted to the applicant to commence Judicial Review proceedings by filing a substantive Notice of Motion within days from 27th February, 2020 when the said leave was granted.

3. On 3rd March, 2020 one James Mukuni who is a Court Bailiff attached to Garissa High Court served the same chamber summons dated 26th February, 2020. On 22nd June, 2020, the 3rd respondent filed a replying affidavit together with a Notice of Preliminary Objection in opposition to the application. On 24th July, 2020, the 2nd respondent through her County's Attorney also filed a replying affidavit opposing the said application.

4. When the said application came up for directions on 24/7/2020, the parties agreed to dispose of the said application by way of written submissions.

APPLICANTS STATEMENT OF FACTS

5. The applicant from that application which was brought under Order 53 CPR and the Law Reform Act Cap.26 Laws of Kenya sought leave to apply for an order of mandamus to compel the 1st and 2nd respondents to register her as the rightful owner of the suit plot No. GSA/BULLA/250.

6. The applicant stated that she had bought the plot from one Dofa Dubat and the same was transferred into her name in 1997 at a price of Kshs.450,000/=. As the registered owner, the applicant further stated that she has made timely and regular land rent and rates to the County Government and has kept and maintained the property in good state.

7. The applicant also stated that 3rd respondent has attempted to trespass into the suit property thereby interrupting her peaceful enjoyment and use of the same. She stated that on 4th December, 2014, the Magistrate's Court in Garissa ruled that she was the rightful owner of the suit plot and that the 3rd respondent preferred an appeal which the appellate court dismissed on 27th July, 2018 for failure to compile and file a record of appeal within the stipulated timelines.

1ST RESPONDENTS STATEMENT OF FACTS

8. The 1st respondent did not file any response.

2ND RESPONDENTS STATEMENT OF FACTS

9. The 2nd respondent through her County Attorney stated the dispute herein is in regard to a plot which he raised before their Chief Officer Garissa Lands Department and upon checking their records, they found that the 3rd respondent is registered as the owner and a letter of allotment issued to her.

10. The 2nd respondent also stated that this application is premature as the 3rd respondent has preferred an appeal to the judgement by the trial magistrate which is yet to be heard and determined.

11. The 2nd respondent further stated that the applicant was granted leave to put in her substantive application within 21 days which she has not done.

12. That the 2nd respondent contends that the applicant should use the proper channel with the Land Registrar and the Chief Officer Lands Garissa County before engaging the court. He stated that the applicant should exhaust all possible avenues before approaching this Honourable Court.

3RD RESPONDENT'S STATEMENT OF FACTS

13. The 3rd respondent beside the replying affidavit also filed a Notice of Preliminary Objection on the following grounds:

(i) This applicant's application should be struck off on grounds that it offends the provisions of Order 53 Rule 3(1) of the Civil Procedure Rules, 2010. This Honourable Court having granted leave to the applicant to put in their substantive application and the 21 days prescribed have since lapsed.

(ii) This application initially was premature before this Honourable Court as the applicant should have exhausted proper avenues for registration of land as prescribed by the Land Act, Land Registration Act and all relevant Legislation and a Court of Law Should be the last resort.

(iii) The present application is out of time.

14. On the factual statement, the 3rd respondent stated that when the Lower Court entered judgement in favour of the applicant in the Lower Court Case on 4/12/2014, she instructed her lawyers to lodge appeal.

15. That on 24/7/2018, this Honourable Court dismissed her appeal for want of prosecution after her lawyers failed to attend court and prosecute the same.

16. That following the dismissal of her appeal, it has been brought to her attention that the applicant has vide a letter dated 5/19/2019 written a request to the Legal Officer, County Government of Garissa to be registered as the rightful proprietor of the suit land.

17. That she then instructed her lawyers to file an application to set aside the order dismissing her appeal that the application for setting aside her appeal has not been heard and seeks to be heard on priority basis.

18. That this application is premature given that there is a pending application for reinstatement of the appeal.

ANALYSIS AND DETERMINATION

19. I have considered the application dated 26th February, 2020. I have also considered the affidavits both in support and in opposition thereto together with the submissions by counsels.

20. It is not in dispute that this Judicial Review proceedings were commenced by an Ex-parte chamber summons dated 26/2/2020 where this court rendered itself by granting the applicant leave to apply for the orders of mandamus which she was seeking against the 1st and 2nd respondents under Order 53 Rule 1 and 2 Civil Procedure Rules.

21. While granting the leave sought, this Court directed the applicant to file the substantive Motion within 21 days from the date thereof pursuant to Order 53 Rule 3 Civil Procedure Rules which provides as follows;

“53 (3) When leave has been granted to apply for an order of mandamus prohibition or certiorari, the application shall be made within twenty one days by Notice of Motion in the High Court and there shall, unless the Judge granting leave has otherwise directed, be at least eight clear days between the service of the Notice of Motion and the day named therein for the hearing.”

22. The application before me is the very same chamber summons dated 26th February, 2020 which the applicant was seeking leave to apply for orders of mandamus. That application is spent and there is nothing remaining to be determined by this court. What the applicant did after the Ex-parte application was allowed, was to photocopy the same application and serve upon the respondents. The applicant did not file the substantive Notice of Motion as ordered by the court within the mandatory period.

23. As such, the Notice of Preliminary Objection in my respective view is merited as the said application is frivolous, vexatious and an abuse of court process. The same is upheld and the application is hereby struck out with costs to the respondents. It is so ordered.

Read, delivered and signed in the Open Court this 29th day of October, 2020.

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E. C Cherono (Mr.)

ELC JUDGE