



**REPUBLIC OF KENYA**

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

**AMENDED JUDICIAL REVIEW APPLICATION**

**MISCELLANOUS CIVIL APPLICATION NO. 18 OF 2018**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW PURSUANT TO ORDER 53 (1), (2), (3) & (4) OF THE CIVIL PROCEDURE RULES 2010 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF LEAVE FOR THE ORDERS OF MANDAMUS COMPELLING THE 1<sup>ST</sup> RESPONDENT TO TAKE ANY APPROPRIATE ACTION TO PREVENT THE 2<sup>ND</sup>, 4<sup>TH</sup> AND 5<sup>TH</sup> RESPONDENTS FROM FURTHER ENCROACHING ON THE APPLICANT’S LAND PURSUANT TO ORDER 53 OF THE CIVIL PROCEDURE RULES, SECTION 8 & 9 OF THE LAW REFORM ACT CAP 26 AND THE FAIR ADMINISTRATIVE ACTION 2015 OF THE LAWS OF KENYA**

**BETWEEN**

**RAMPAI OLE SAIDIMU.....EX PARTE APPLICANT**

**AND**

**THE DISTRICT LAND REGISTRAR.....1<sup>ST</sup> RESPONDENT**

**MUTERO SANTAMO.....2<sup>ND</sup> RESPONDENT**

**HON. ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**MAGEI SANTAMU SENGE.....4<sup>TH</sup> RESPONDENT**

**JOSEPH SANTAMU.....5<sup>TH</sup> RESPONDENT**

**EX PARTE.....RAMPAI OLE SAIDIMU**

**RULING**

What is before Court for determination is the Ex parte Applicant’s Amended Chamber Summons application dated the 11<sup>th</sup> June, 2018 where he seeks leave to apply for orders of Mandamus including Prohibition and the said Leave operate as a stay pending the determination of the substantive motion. The application is premised on the amended Statutory Statement of Facts and Amended Verifying Affidavit sworn by RAMPAI OLE SAIDIMU as well as the annexures thereon. In the verifying affidavit, the deponent confirms being the registered proprietor of land parcel number Kajiado/ Purko/ 452 which borders the 4<sup>th</sup> Respondent’s parcel of land known as Kajiado/ Purko/ 453. He explains that there has been a protracted boundary dispute between the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents and himself over the exact location of their boundary. Further, the 2<sup>nd</sup> and 5<sup>th</sup> Respondents have continuously encroached on his land. He has lodged formal complaints to various offices seeking final redress and on various dates, they were summoned by the Land Registrar including the Land Surveyor for ascertaining the boundary. He contends that the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents have failed to abide by the Counsel provided by the Provincial Administration Officers through numerous meetings held involving the said dispute. Further, in 2004, the District Land Surveyor surveyed the land and subsequently prepared a comprehensive report making a final conclusion to the aforementioned dispute. He further explains that on 29<sup>th</sup> September, 2016 a site visit was conducted by the District Surveyor’s office which subsequently prepared a comprehensive report dated 4<sup>th</sup> October, 2016. He insists despite the above, the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents have continued to persist that the boundary dispute was not resolved. Further, the 1<sup>st</sup> Respondent also prepared a comprehensive report on 17<sup>th</sup> January, 2017 making a final conclusion to the boundary dispute and advised the parties to maintain and respect the boundaries as determined. He claims the 1<sup>st</sup> Respondent being a public official has refused and or ignored to perform a public duty and should be compelled to do so. Further, an order of mandamus should compel

him to take appropriate action to stop any further encroaching and trespassing on land parcel number Kajiado/ Purko/ 452 and maintain the boundaries as determined. He reiterates that he has made numerous requests to the 1<sup>st</sup> Respondent to take appropriate action to stop the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents from encroaching and or trespassing on his land but he has deliberately refused/ declined to adhere to his requests.

The application was unopposed .

### **Analysis and Determination**

Upon perusal of the instant Amended Chamber Summons Application including the amended Statement of Facts and Verifying affidavit as well as the annexures thereon, I find that the only issue for determination is whether the Ex parte Applicant is entitled to leave to commence judicial review proceedings.

The Applicant seeks leave to apply for orders of Mandamus including Prohibition to compel the 1<sup>st</sup> Respondent to maintain boundaries between Kajiado/ Purko/ 452 and 453 as had been determined. He contends that despite numerous requests, the 1<sup>st</sup> Respondent has declined to do so, and he has hence failed to perform his public duty. Further, this is a breach of the principles of natural justice.

In the case of **Republic vs. County Council of Kwale & Another Ex Parte Kondo & 57 Others Mombasa HCMCA No. 384 of 1996** Waki, J (as he then was) provided the parameter for granting leave to file judicial review and stated as follows:

**“The purpose of application for leave to apply for judicial review is firstly to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration. The requirement that leave must be obtained before making an application for judicial review is designed to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived... Leave may only be granted therefore if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the applicant the test being whether there is a case fit for further investigation at a full inter partes hearing of the substantive application for judicial review. It is an exercise of the court’s discretion but as always it has to be exercised judicially”.**

I note from the Comprehensive Report of the Principal Land Registrar dated the 17<sup>th</sup> January, 2017, he clearly indicated that at the expiry of 30 days together with the District Surveyor, they would proceed to fix the two beacons as determined, if no objection would have been filed. In the current scenario, there is no indication if any objection has been filed. I note it is more than three years since the said boundary dispute was determined. The Ex parte Applicant avers that despite several requests to the 1<sup>st</sup> Respondent, who is the Land Registrar, has failed to act as per the determination made in the aforementioned report.

It is against the foregoing and in associating myself with the judicial authority cited above that I will exercise my discretion and grant the Ex parte Applicant leave to commence judicial review proceedings of Mandamus and Prohibition within 21 days from the date hereof. I further order that the said leave operates as a stay pending the hearing and determination of the substantive motion.

**Dated signed and delivered in open court at Kajiado this 5th day of October, 2020.**

**CHRISTINE OCHIENG**

**JUDGE**