



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KISII

Misc Civil Appli 52 of 2009

IN THE MATTER OF THE REGISTERED LAND ACT, CHAPTER 300 LAWS OF KENYA

AND

IN THE MATTER OF REGISTERED LAND PARCEL NUMBERS SHARTUKA/512-514,516,518-524,545-546,570,571,573-593,595-611,620-639,641-674-676-693,695,700-714,717,719-739,743-744,746,748,753-759,762-771,774-787,789,791,792,794,818-821,823,823,826-835,838,852-54,857-859,17,18,26,29,36,45,63,85,92,103,111,112,117,126,127,130,147,149,155,180,182,206,213,221,223,240,251,254,258,297,319,316,332,320,370,369,368,356,362,350,388-400,386,385,372-382,401-

??+407,409,411-416,418-511 inclusive

AND

IN THE MATTER OF: AN APPLICATION BY MOSES LAMASHON KORINKO, SIMON LEPARAIKO TIEPOO, DAVID NTUKAI, SAMSON KELLIAN, SAMWEL M. NAIDUYA, JACKTON KUROMONGI (and 428 other registered land owners) FOR JUDICIAL REVIEW (CERTIORARI & PROHIBITION)

AND

IN THE MATTE ROF: FRESH REGISTRATION AND ISSAUNCE OF TITLES BY THE CHIEF LAND REGISTRAR

AND

IN THE MATTER OF: SHARTUKA GROUP RANCH

AND

IN THE MATTER OF: REGISTERED LAND ACT, CAP 300, LAWS OF KENYA

AND

IN THE MATTER OF: ORDER LIII RULES 1,2,3 & 7 OF THE CIVIL PROCEDURE RULES

CHAPTER 21, LAWS OF KENYA

BETWEEN

REPUBLIC.....APPLICANT

-VERSUS-

DIRECTOR OF SURVEYS & OTHERS.....RESPONDENT

AND

EXPARTE

MOSES LEMASHON KORINKO

SIMON LEPARAIKO TIEPOO

DAVID NTUKA

SAMSON KELIAN

SMUEL M. NAIDUYA

JACKTON KUROMONGI & 428 OTHERS

RULING

The history of this dispute is quite clear. The *exparte* applicants were the registered member of Shartuka Group Ranch. Between 1995 and 1998 the Group Ranch was demarcated and adjudicated and relevant Registry Index Maps were prepared, published and issued. The registration process commenced which culminated in the issuance of Title Deeds to the *exparte* applicants. In 1998 a group of persons led by one Issa Leshan Keres filed civil proceedings in Kisumu HCCC no. 252 of 1998 seeking to impeach the Title Deeds. The suit was struck out. They were aggrieved and filed an appeal in *Civil Appeal no. 237 of 1998*. Pending the appeal, they filed *Civil Application No. 195 of 1998* for interim orders. The application was granted. When the appeal came for hearing it was struck out, and the interim orders thereby discharged.

Despite this, on 25/7/2003 the 2nd respondent caused Gazette Notice Number 4984 to be published cancelling the Title Deeds issued in respect of the Group Ranch. He cited the Court of Appeal decision as his basis for the cancellation. The *exparte* applicants commenced judicial review proceedings in *Kakamega H.C. Misc.Application No. 103 of 2003* which was not opposed. An order

of Certiorari was issued to remove into the court for quashing the decision of the 2nd respondent contained in the Gazette Notice which was found to be null and void. The court noted that the Court of Appeal had struck out the appeal and discharged the interim orders and therefore it could not be basis for the decision to cancel the Title Deeds.

On 30/4/2009 the 2nd respondent wrote to the 3rd respondent, citing the Court of Appeal decision and his own letter dated 4/8/2004, instructing the later to collect from his office an Area List for 763 parcels and Registry Index Map Sheets for the purpose of registration. The *exparte* applicants saw that as an act that was in contempt of court and filed an application in the Kakamega case to have the respondents cited. The respondents, once again, filed no papers in response. The court found them guilty of contempt and they are waiting to be punished for this.

The *ex parte* applicants have in this judicial review application requested that the letter of 30/4/2009 be called into this court and quashed by an order of Certiorari. It also seeks to Prohibit the 2nd and 3rd respondents from publishing or re-publishing fresh Registry Index Maps concerning Shartuka Group Ranch in violation or contradiction of the previous Registry Index Maps. The Motion followed leave and stay that were granted on 25/5/2009. The 1st respondent and the Attorney General (4th respondent) were the other parties. The respondents were all served but did not respond. The factual position stated in the affidavit and documents of the *ex parte* applicants was not controverted. However, the interested parties, who were the parties litigating with the *ex parte* applicants in the High Court in Kisumu and Court of Appeal, swore a replying affidavit saying that on 1/2/2008 the 2nd respondent published a Gazette Notice cancelling all previous titles held by members of the Group Ranch and has pursuant to that issued fresh titles, and therefore that there is nothing to quash in this case. It is notable that this Gazette Notice is word for word similar to the one contained in the Gazette Notice of 25/7/2003 which was subject of the judicial review proceedings in Kakamega and which was nullified. Its basis is the Court of Appeal decision which gave no authority to the respondents to nullify the titles that had been issued to the *ex parte* applicants. The respondents have no authority under the Registered Land Act, Cap. 300 of the Laws of Kenya to cancel titles that have been issued. They have to go to the High court and persuade it to cancel any such titles. The letter of 30/4/2009 has been found to have been contemptuously issued and its author (2nd respondent) is due for punishment. The effect of the letter is to cancel the titles that have been issued to the *ex parte* applicants and the other members of Shartuka Group Ranch.

The 2nd respondent has no authority to cancel or recall titles already issued. In any case, he wrote the letter in exercise of his statutory powers and his action was going to affect the *ex parte* applicants who have titles issued by his office. He had the duty to hear the *ex parte* applicants before reaching the decision to issue fresh Area List and Registry Index Maps. *Section 19 of the Registered Land Act* that gives the 3rd respondent the mandate to alter Registry Index maps provides that this is subject to the consent of the affected party. The *ex parte* applicants were the affected parties entitled to be heard in the matter.

In short, the respondent acted in excess of his authority to write the letter of 30/4/2009 and his decision contained in the letter went against the rules of natural justice when he failed to give the *ex parte* applicants a hearing in regard to the matter. The letter is hereby called in the court and quashed by the order of Certiorari.

This case reveals that the respondents are engaged in acts of extreme impunity in the way they are dealing with the *ex parte* applicants and the affairs of Shartuka Group Ranch. Even when the High Court and Court of Appeal have made decisions in the matter and they have found the respondents guilty of contempt of court in regard to the matter they do not care. They do not file papers in these cases and are unwilling to abide by court orders. The rule of

law can only be better served where the Government obeys its own laws and the decisions of its courts. I hereby direct that a copy of this decision be personally served on the Honourable the Attorney General and the Minister responsible for land.

An order of Prohibition will issue to prohibit the conduct of any registration and the issue of any new titles in respect of Shartuka Group Ranch as long as the respondents do not want to follow the provisions of the *Registered Land Act, Cap. 300*. Costs of this application shall be paid by the respondents and the interested parties.

Dated, signed and delivered this 2nd day of November, 2009.

A.O.MUCHELULE

JUDGE

2/11/2009

Before A.O.Muchelule-Judge

Mongare-court clerk

Mr.Oguttu-present

Court: ruling in open court.

A.O.MUCHELULE

JUDGE

2/11/2009