



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW NO. 7 OF 2016

JEREMIAH M'NJOGU M'TORUGOJI.....APPLICANT

VERSUS

DISTRICT LAND REGISTRAR MERU CENTRAL.....1ST RESPONDENT

NATIONAL LAND COMMISSION.....2ND RESPONDENT

DISTRICT SURVEYOR MERU CENTRAL.....3RD RESPONDENT

HON. ATTORNEY GENERAL MERU CHAMBER.....4TH RESPONDENT

H. YOUNG CO. (E.A) LTD.....5TH RESPONDENT

MARTHA NAITORE M'MURITHI.....6TH RESPONDENT

GILVERSE MUTETHIA JOHN.....7TH RESPONDENT

JUDGMENT

Introduction

The applicant commenced these Judicial Review proceedings by a chamber summons for leave to apply for an order of prohibition to prohibit the District land registrar Imenti North district from further dealing with land parcels no's Ntima/Ntakira/2488 and 2489. The applicant also sought leave to apply for an order of Mandamus to compel the district land registrar, Imenti north district to consolidate land parcels no.s Ntima/Ntakira 2488 and 2489 and to revert back to the original title deed no. Ntima/Ntakira/685 to facilitate the implementation of court orders granted in civil application no. 43 of 1991 (Nairobi) and 15 of 1990 (Nyeri). That exparte application dated 23/11/2015 was filed under certificate of urgency on 29.2.2016 when the court file was placed before the duty judge on 3.3.2016, the court directed the application to be served for interparties hearing on 17.3.2016. On the 17.3.2016, Mr. Nyenyire appeared for the exparte applicant one Mr. Kimathi was present for 1st, 2nd, and 3rd and 4th respondents. The 1st – 2nd and 3rd interested parties were absent. The court observed that the respondents and the interested parties be served properly within another seven days.

The matter was rescheduled to 26/4/2016 for further directions. Again on 26/4/2016 Mr. Nyenyire was present for the exparte applicant while Mr. Kimathi was present for the respondents. Only the 2nd interested party was present. The court gave the following directions:

- (i) Applicant to serve the order issued by the court today upon the 2nd respondent and the 1st and 3rd interested parties within 10 days of today.
- (ii) Eventually their application will be heard by way of written submissions.
- (iii) Parties who have not responded to the application to do so within 30 days of today.
- (iv) Directions on 19/7/2016.

On 19.7.2016, Mr. Nyenyire appeared for the exparte applicant while Mr. Kiongo was present for the respondents. The court directed that the matter be mentioned on 7.9.2016. On 7.9.2016 the court directed the 1st respondent to be served with the order issued on that date and any other unserved suit documents. The court also directed that a ruling regarding the consolidation or non-consolidation of the various related matters be delivered on 14/9/2016.

On 14/9/2016, Justice P.M Njoroge issued a brief ruling as follows:

“On 7.7.2016, the parties in this suit agreed to adopt the orders/directions contained in this court’s ruling in misc. Application no. 5 of 2008 in which the parties are canvassing fairly similar issues”.

The order in Misc. application no. 5 of 2008 which also are applicable to this suit are as follows:-

(1) “Succession cause no. 351 of 2002, HCA 21 of 1990, JR 5 of 2008, Misc. application no. 7 of 1998, JR 31 of 2013, JR 7 of 2016 Misc. application no. 19 of 2016 and any other related suits if they exist, have their hearing in ELC be heard by the Hon. Justice Gikonyo J, or be deferred until all issues concerning succession are heard and determined”.

(2) Parties do obtain a date for opposite directions before the Hon. Justice Gikonyo J, whose court handles succession matters. It is so ordered”.

On 27/11/2017 this matter came up for hearing and the parties agreed to canvass the application by way of written submissions.

Disposition

I have looked at the exparte chamber summons, the verifying affidavit and statement of facts dated 23/11/2015. I have also perused the documents attached thereto. It is trite law that an exparte application for Judicial Review under order 53 rule 1 civil procedure rules and section 8 and 9 of the law reform act cap 26 laws of Kenya is for leave to commence judicial review proceedings. It is important to examine the purpose and the principles which guide the court in exercising its discretion in deciding whether or not to grant the leave sought. It is now well settled that the requirement that leave must be sought and obtained before making an application for judicial review is designed to protect the court process from abuse by mischievous litigants who may want to waste precious Judicial time by filing frivolous applications which have no chance of success. In the case of **Republic vs County Council of Kwale & another exparte Kondo & 57 others HCM CA No. 384 of 1996 (Mombasa)** unreported Justice Waki (as he then was) held as follows:

“The purpose of application for leave to apply for Judicial review is firstly to eliminate at an early state 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 on administrative error, and to remove 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 investigations at a tuk interparties 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”.

The rationale for this requirement was succinctly put by **Justice Odunga in the case of lady Justice Joyce Khaminwa vs Judicial service commission and another (2014) eKLR** where it was held as follows:

“The rationale for the requirement that leave be sought and obtained is to exclude frivolous vexatious or applications which prima facie appear to be abuse of the process of the court or those applications which are statute barred. Leave should be granted if on the material available the court considers without going into the in depth, that there is an arguable case. Leave stage is therefore a filter whose purpose is to weed out hopeless cases at the earliest possible time, thus saving the pressure on the courts and needless expense for the applicant by allowing malicious and futile claims to be weeded out or eliminated so as to prevent public bodies being paralyzed for months because of pending court action which might turn out to be unmeritorious”.

Having looked at the materials attached to the application for leave, I find that the exparte applicant is seeking leave to apply for an order of mandamus to compel the proposed respondent to comply with a court order issued by other courts of competent jurisdictions. Being High court misc. civil application no. 43 of 1991 (Nairobi) and high court Misc. civil application No. 1990 (Nyeri).

I also hasten to add that judicial review proceedings are not essentially concerned with the merits of the decision but the decision making process itself. The exparte applicant has not attached any decision by the respondent which they seek leave to be quashed or have him compelled to perform in law. This application for leave is therefore frivolous and scandalous. The same is hereby dismissed. Each party to bear his own costs.

It is so ordered.

READ, DELIVERED AND SIGNED AT MERU IN THE OPEN COURT THIS 28TH DAY OF FEBRUARY, 2019

E.C CHERONO

JUDGE

In the presence of:

1. Applicant

2. Mr. Kimathi for respondent

3. C/A - Kananu