



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

MISC APPLICATION NO 164 OF 2016

REPUBLIC.....APPLICANT

VERSUS

THE NATIONAL LAND COMMISSION.....1ST RESPONDENT

THE REGISTRAR OF TITLES, NAKURU.....2ND RESPONDENT

ASIS STORE LIMITED.....1ST INTERESTED PARTY

WILLIAM NJOROGE KARANJA.....2ND INTERESTED PARTY

EX-PARTE

KENYA NATIONAL CORPORATION LIMITED

RULING

(application by the ex-parte applicant to be allowed access to a land file and for the same to be made available to court; suit being one for judicial review to quash an award of the 1st respondent; the award already available; judicial review being a suit which inclines more towards procedure rather than substance; no need to have the whole land file availed to court for it is not the land file which is sought to be quashed but a specific award which is already before court; applicant may however access the file for its own records)

1. The application before me is that dated 3 April 2018 filed by the ex-parte applicant. It seeks the following orders :-

(i) Spent (certification of urgency).

(ii) That the 1st respondent herein, the National Land Commission be compelled to produce the original File No. 191503 on the Review of Nakuru/Municipality Block 6/158 containing all documents, correspondences and proceedings pertaining to the suit property herein.

(iii) That the 1st respondent be compelled to provide the Court and all parties to this suit with certified copies of all correspondences and proceedings in File No. 191503 on the review of Nakuru/Municipality Block 6/158 pertaining to the suit property herein.

(iv) That the costs of this application be in the cause.

2. The application is based on grounds inter alia that the ex-parte applicant has attempted on several occasions to peruse the said file No. 191503 and make copies of the documents, correspondences and proceedings, but has been unsuccessful as the 1st respondent has refused to allow the same. The ex-parte applicant feels that it is necessary for the said file to be produced in court so that the court may make a just determination.

3. There is no opposition to the application, save that Mr. Kisila, learned counsel for the 2nd interested party submitted that this application is a diversionary tactic.

4. I have considered the application. In the suit herein, the ex-parte applicant has applied for orders of certiorari to quash the proceedings and orders of the 1st respondent titled "Hearing Report on Review of Grants and Disposition of Public Land Nakuru County for Nakuru

Municipality Block 6/158” which report is dated 17 December 2015. The applicant has also sought orders of prohibition to restrain the 1st respondent and the 2nd respondent from executing, benefiting from, relying on or implementing the said decision of 17 December 2015. Inter alia, it is said that the decision was made without affording the ex-parte applicant an opportunity to be heard; that the decision is illegal as it was made in violation of the express provisions of Article 47(1) of the Constitution which requires fair administrative action; that the decision was made without jurisdiction and that the pronouncements were made sub judice as there is a pending matter before the High Court; that the decision is made in abuse of power and bad faith; that the decision is irrational; and that the decision is illegal as it disenfranchised the ex-parte applicant of public land which was not available for allocation to a private person and gave it to the 2nd interested party.

5. It will be seen therefore that this is a judicial review motion, specifically targeted at a decision that was made on 17 December 2015. What the ex-parte applicant wants is to quash this decision on the grounds that the ex-parte applicant has specified in its judicial review motion. I have seen annexed to the motion, an annexure “MM-19” which is the impugned decision. I have also seen annexed copies of the grant and title that the ex-parte applicant claims to hold to the suit land.

6. Now, I really do not see why the ex-parte applicant feels that it is necessary for this court to be availed of the whole file relating to the grant of land in issue. What I have before me is a very specific prayer for quashing of a decision, and it follows that what is most important is the availability of that award, which as I have pointed out, is annexed to the motion. I really do not see why the ex-parte applicant wants the whole file made available to this court, for it is not the case of the ex-parte applicant that the file should be quashed. It is necessary for the ex-parte applicant to appreciate that it chose the way of judicial review, and that judicial review is only limited to procedure and not to the merits of the decision. If the ex-parte applicant wishes to interrogate the merits of the decision, thus the need to have the file, it needs to assess its position in the matter. What I will need to determine in this Judicial Review motion are issues such as whether due process was followed, whether the 1st respondent had jurisdiction to make the decision that it did and such like matters, but I may not be able to interrogate the merits or otherwise of that decision. It is not necessary for me to be availed of that file to see whether due process was followed before arriving at the impugned decision, whether the 1st respondent had jurisdiction to hear the dispute, or whether the ex-parte applicant was given a hearing.

7. I appreciate the right of every person to access records, and I do appreciate the right of the ex-parte applicant to access the subject file. I am prepared to give the ex-parte applicant an order to access the file but I find it unnecessary for that file to be placed before me, because, as I have explained above, it is not that file which is in issue, but a particular award which is already before me.

8. I therefore only make an order that the ex-parte applicant be allowed access to peruse and make any copies of the said File No. 191503 but I decline the prayer that the said file be made available to this court.

I make no orders in respect of this application.

9. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 26th day of February 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mrs. Mbeche for the ex-parte applicant.

No appearance on the part of the respondent and interested parties.

Court Assistant: Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU