



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC JUDICIAL REVIEW NO. 3 OF 2018

BETTY KIPSAITA.....APPLICANT

VERSUS

NATIONAL LAND COMMISSION.....1ST RESPONDENT

DAVID MUTAI ON BEHALF OF

KIPNYIGAI SQUATTERS.....2ND RESPONDENT

RULING

1. By a notice of motion dated 6/8/2018 the 2nd respondent herein sought the following principal orders:-

(a) That this court be pleased to make an order referring this case to the National Land Commission the 1st respondent for hearing and determination;

(b) That the status quo prevailing at the time of filing this suit be maintained.

2. The application is based on the grounds set out at the foot of the application. These are inter alia that the 1st respondent was created to hear and determine such disputes and that the decision sought to be quashed is not in existence.

3. Naturally the 1st respondent declared that it does not oppose the application. Applicant in the main judicial review notice of motion who is a respondent herein naturally opposed the motion and filed a replying affidavit she swore on 13/9/2018. In that affidavit she states that National Land Commission does not possess jurisdiction to hear and determine that matter, it involving private land and that the 2nd respondent's complaint to the 1st respondent contradicts the provisions of **Section 15(3) (b) (e)** of the **National Land Commission Act No. 5 of 2012** as amended by **section 38** of the **Land Laws Amendment Act 2016**.

4. It is deponed that the acts of the 1st respondent are a nullity for want of jurisdiction and that reference to the 1st respondent would negate the provisions of **Section 14(7)** of the **National Land Commission Act No. 5 of 2012** and **Article 67(2)(e)** of the **Constitution of Kenya** and does not disclose any historical injustice and that the 2nd respondent intends to have the estate of her husband arbitrarily deprived of its property in violation of **Article 40** of the constitution and the **Historical Injustices Rules 2016**. She denies having intent to dispose of the suit land before the termination of these judicial review proceedings.

5. I have referred to the grounds in the statutory statement filed with the judicial review notice of motion. Allegation that the 1st respondent has no jurisdiction under the law and the constitution is the backbone of the judicial review and is also a normal ground for judicial review orders if proved.

6. If that is so can this court refer the matter to the 1st respondent against the wishes of the applicant without first determining whether the 1st respondent has jurisdiction?

7. This court notes that the ultimate decision will be either that the 1st respondent has or does not have jurisdiction and if the answer to this judicial review application is that it possesses jurisdiction, then the consequence is that the proceedings herein have no merit and thus the 1st respondent was undertaking can continue with the proceedings before it. If it is found to have jurisdiction this court will state so.

8. In my view unless it be by consent of the parties that this matter be referred to the 1st respondent there is no good basis for referring this matter back to the 1st respondent while the issue of jurisdiction has not been determined and it is premature to do so.

9. On those grounds alone I find that the application dated **8/6/2018** is devoid of merit and the same is dismissed with costs to the respondent.

10. The judicial review notice of motion should be set down for hearing on its merits.

It is so ordered.

Dated, signed and delivered at Kitale on this **4th** day of **February, 2019**.

MWANGI NJOROGE

JUDGE

4/02/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Bisonga holding brief for Wandabwa for applicant

Mr. Ambutsi holding brief for Mengich for 2nd respondent

N/A for 1st respondent

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

4/02/2019