



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAKURU

JR NO. 4 OF 2019

REPUBLIC.....APPLICANT

VERSUS

LAND DISPUTE TRIBUNAL, BAHATI...1ST RESPONDENT

LAND REGISTRAR NAKURU.....2ND RESPONDENT

AND

PETER KARANI NDUKU.....INTERESTED PARTY

EX PARTE

JACOB KIPKURUI KONGA

AND

KAPROMOI A. CHEPSERGON

RULING

(Application seeking leave to commence judicial review for orders of certiorari and prohibition; decision in issue being from the Land Disputes Tribunal; argument that the Tribunal did not have jurisdiction; leave granted as prayed but stay declined).

1. The application before me is that dated 21 March 2019 and amended on 27 March 2019. The ex-parte applicants wish to have the following orders :-

That leave do issue to the applicants to apply for :-

(i) An order of Certiorari to move this Honourable court to quash the decision of the 1st respondent cancelling the applicant's title/ownership of land parcel Dundori/Mugwathi Block 2/173 made on 13th December 2006 in Land Dispute No. 45 of 2006, the order of the magistrate adopting it on 11th December 2008 in Nakuru Land Dispute No. 16 of 2007 and the ruling made by L.D.A.C in Appeal No. 2 of 2009.

(ii) An order of Prohibition to issue against the 2nd respondent (Land Registrar, Nakuru) prohibiting him from cancelling the applicant's title and issuing a new title deed to the Interested Party as was ordered by the 1st respondent (Land Disputes Tribunal, Bahati) on the 13th December 2006 and adopted by the Magistrate in Nakuru Land Dispute No. 16 of 2007 on 11th December 2008 and the ruling of L.D.A.C in Appeal No. 2 of 2009.

2. The ex-parte applicants have also asked that the leave so granted operate as stay of the decision of the 1st respondent cancelling the ex-parte applicants' title to land parcel Dundori/Mugwathi Block 2/173.

3. I have gone through the application. The ex-parte applicants aver that they are the owners of the land parcel Dundori/Mugwathi Block 2/173 (hereinafter referred to as "the suit land") and they have annexed a title deed issued on 11 September 1997. They have mentioned that the interested party laid claim to it through the case Bahati Land Disputes Tribunal Case No. 30 of 2000 (later changed to No. 45 of 2006) and an award was made in his favour and it was directed that their title be cancelled. The award was adopted by the court in Land Disputes

Case No. 16 of 2007 on 11 December 2008. An appeal was filed at the Provincial Land Disputes Appeals Committee Case No. 9 of 2009 which upheld the decision of the Tribunal. The ex-parte applicants wish to argue that the Tribunal acted in excess of its jurisdiction.

4. I have no reason not to allow the application seeking leave to commence the judicial review proceedings for orders of certiorari and prohibition. The respondents and the interested party will have a chance to respond to the same and a decision will be made one way or another on the substantive motion.

5. I however have a problem issuing an order of stay for the ex-parte applicants themselves seem to suggest that the decision was implemented, and if that indeed happened, it means that their title was cancelled. They have not displayed a current search of the property which would make me know the position of the title at the moment. I would therefore not at the moment make any orders affecting title of the suit land. The ex-parte applicants are however free to revisit that issue once the respondents have filed their documents in this suit.

6. I now direct that the main motion be filed and served in 21 days.

7. The costs of this application will abide the costs of the main motion.

8. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 4th day of April 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. Bitok holding brief for Mrs. Wanderi for the ex-parte applicants.

Court Assistant : Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU