



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NYAHURURU

JUDICIAL REVIEW NO 13 OF 2018

IN THE MATTER: OF ENDORSMENT/REGISTRATION OF EXTENTION OF LEASE FOR L.R 7173/32 OL-JORO OROK

AND

IN THE MATTER OF REGISTRATION OF CONVEYANCE IN FAVOR OF RANAN INVESTMENTS LTD

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

CHIEF LAND REGISTRAR.....RESPONDENT

EX-PARTE

RANAN INVESTMENTS LTD.....SUBJECT

JUDGMENT

1. Upon successfully obtaining orders to commence Judicial Review proceedings for the order of Mandamus against the Respondent, RANAN INVESTMENTS LTD, the Subject herein filed Notice of Motion dated the 16th November 2018 pursuant to the provisions of Order 53 Rule 3 of the Civil Procedure Rules where they sought the following orders:

i. That the court issues an order of Mandamus to compel the Chief Land Registrar to register the extension of the lease and conveyance in respect of L.R 7173/32 Ol Joro –Orok and register the conveyance in favour of the Applicant.

ii. The costs of this application to be borne by the Respondent.

2. The application was supported by grounds on the face of it as well as the statutory statement of the applicant herein.

3. It is worth noting that the said application was served upon the Respondent herein as evidenced by the Affidavit of Service filed on the 16th February 2018 who did not file their response to the same. The court shall therefore deem the said application as unopposed and uncontroverted.

4. Briefly, the Applicant's grievance is to the effect that he purchased the suit land from the administrators of the estate of the registered owners who had prior to the sell applied for and paid for the extension of the lease and had obtained the letter for extension of the lease from the Commissioner of Land herein annexed as TC 2(b)

5. That following the said extension, the Chief Land Registrar has failed and/or refused to endorse, or cause the endorsement of the register the extension of the lease despite several reminders and has not given reasons for the refusal.

6. The Applicant's application was to the effect that pursuant to Section 107 of the Land Registration Act, the Chief Land Registrar had the statutory duty to register interest acquired by the extension of the lease and by conveyance before the repeal of the Registration of Titles Act.

7. Order 53, rule 3 (1) of the Civil Procedure Rules stipulated that:

When leave has been granted to apply for an order of mandamus, prohibition or certiorari, the application shall be made within twenty-one days by notice of motion to the High Court, and there shall, unless the judge granting leave has otherwise directed, be at

least eight clear days between the service of the notice of motion and the day named therein for the hearing.

8. I have considered the application, and the affidavit in support of the same.

9. The Court of Appeal in the case of **Kenya National Examinations Council vs. Republic Ex parte Geoffrey Gathenji Njoroge & Others [1997] eKLR** held as follows;

“The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right or no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual. The order must command no more than the party against whom the application is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way...These principles mean that an order of mandamus compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. An order of mandamus compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same...”

10. Similarly, in the case of **Mureithi & 2 Others vs. Attorney General & 4 Others [2006] 1 KLR (E&L) 707** the court held that:

“A mandamus issues to enforce a duty the performance of which is imperative and not optional or discretionary...The order of mandamus is of a most extensive remedial nature, and is, in form, of justice, directed to any person, corporation or inferior tribunal requiring him or them to do some particular thing thereon specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific remedy for enforcing that right and it may issue in cases, where although there is an alternative legal remedy yet the mode of redress is less convenient, beneficial and effectual.”

11. From the above captioned authorities, it is clear that any person who seeks an order of *mandamus*, must satisfy the Court that the action he seeks to compel the Respondent to perform is a duty which the Respondent is under a duty whether at common law or by statute to perform.

12. The Applicant at paragraph 5 of the application has averred, which averment was not controverted by the Respondent, that it has on several occasions pursued the registration of the extension of the lease either by way of endorsement or otherwise, but the Respondent has either failed or refused to register the said extension and conveyance in his favour.

13. Section 13 of the Land Act on the lessee’s pre-emptive rights to allocation, stipulates as follows

(1) Before the expiry of the leasehold tenure, the Commission shall—

(a) within five years, notify the lessee, by registered mail, of the date of expiry of the lease and inform the lessee of his or her pre-emptive right to allocation of the land upon application, provided that such lessee is a Kenyan citizen and that the land is not required by the national or county government for public purposes; and

(b) if within one year the lessee shall not have responded to the notification, publish the notification in one newspaper of nationwide circulation.

(1A) Where a lease is not granted after an application under subsection (1), the Commission shall give the lessee the reasons for not granting the lease, in writing.

14. From the wording of the above provisions of the law, the same is clear to the effect that that the previous holder of the lease has the first right of priority over its renewal, so long as the person is a Kenyan citizen and so long as the land is not required for a public purpose. It is therefore not in doubt that the person who was entitled to a renewal of a leasehold that had expired in the first instance, was the registered owner of the suit land who were the previous holders of the leasehold, **the registered owners herein**.

15. The Supreme Court of Kenya in **Communications Commission of Kenya & 5 Others Vs Royal Media Services Limited & 5 Others [2014] eKLR** held that:

“An instance of legitimate expectation would arise when a body, by representation or by past practice, has aroused an expectation that is within its powers to fulfill. A party that seeks to rely on the doctrine of legitimate expectation, has to show that he has locus standi to make a claim on the basis of the legitimate expectation.”

16. In the case of **Republic vs Chief Land Registrar, Ex-parte Stephen Karanja Kungu[2014] eKLR**, the court held that:

“Therefore, there are circumstances under which the court would be entitled to intervene even in the exercise of discretion. Whereas

we appreciate the fact that the decision whether or not to register the transfers in favor of the applicant by the respondents is an exercise of discretion the court is empowered to interfere with the exercise of discretion in the following situations:- (1) where there is an abuse of discretion, (2) where the decision maker exercises discretion for an improper purpose, (3) where the decision maker is in breach of the duty to act fairly, (4) where the decision maker has failed to exercise statutory discretion reasonably, (5) where the decision maker acts in a manner to frustrate the purpose of the Act donating the power, (6) where the decision maker fetters the discretion given, (7) where the decision maker fails to exercise discretion, (8) where the decision maker is irrational and unreasonable.”

17. The Land Chief Register has not given any reason as to why (s)he has failed and/ or refused to register the extension of the lease and conveyance in respect of L.R 7173/32 Ol Joro –Orok in favour of the Registered owners herein. To this effect this court finds that the Chief Land Registrar, pursuant to the extension of the lease by the National Land Commission vide its letter dated the 16th August 1994, herein annexed as TC 2 (c), and the payments thereafter was duty bound to register the extension of the lease and conveyance in respect of L.R 7173/32 Ol Joro –Orok in favour of the Registered owners.

18. This failure by a public body or authority to state the reasons for its action or failure to take action, amounts to procedural impropriety and an affront to fair administrative action contrary to Article 47(1) and (2) of the Constitution.

19. For the above reasons and based on the law and authorities herein cited, and there having been an averment and evidence (see TC 1) that the suit property was still registered in the name of the registered owners, I do grant an order of *mandamus* compelling the Respondent to register the extension of the lease and conveyance in respect of L.R 7173/32 Ol Joro –Orok in favour of the Registered owners herein.

Dated and delivered at Nyahururu this 4th Day of April 2019.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE