



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**JUDICIAL REVIEW APPLICATION NO. 11 OF 2018**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF PROHIBITION & MANDAMUS**

**AND**

**IN THE MATTER OF ARTICLE 2, 10, 19, 40, 47, 48 AND 50 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF SECTIONS 76, 77 AND 78 OF THE LAND REGISTRATION ACT, 2012**

**AND**

**IN THE MATTER OF SECTIONS 8 & 9 OF THE LAW REFORM ACT, CAP 26, LAWS OF KENYA**

**AND**

**IN THE MATTER OF SECTIONS 7 & 8 OF THE FAIR ADMINISTRATIVE ACTION ACT 2015**

**BETWEEN**

**JANE WANJIKU NYOTA.....1<sup>ST</sup> APPLICANT**

**VICTORIA WANGUI KIMANI.....2<sup>ND</sup> APPLICANT**

**MARY WAIRIMU NYOTA.....3<sup>RD</sup> APPLICANT**

**AND**

**LAND REGISTRAR, KAJIADO COUNTY.....1<sup>ST</sup> RESPONDENT**

**CHIEF LAND REGISTRAR.....2<sup>ND</sup> RESPONDENT**

**RULING**

What is before Court for determination is the Applicants' Chamber Summons Application dated the 15<sup>th</sup> March, 2018 brought pursuant to Order 53 Rule 1, 2 and 3 of the Civil Procedure Rules and all the other enabling provisions of the law.

The Applicants seek leave of Court to apply for orders of Mandamus and Prohibition in respect of land reference numbers KAJIADO/ DALALEKUTUK/ 6870 – 6919. Further that leave so granted operate as stay of any restrictions, caution, caveat, changes, dealings and/ or transactions in the suit properties being KAJIADO/ DALALEKUTUK/ 6870 – 6919.

The application is supported by the Statement of Facts and an Affidavit Verifying Facts sworn by JANE WANJIKU NYOTA. In the said affidavit she avers that the applicants are joint proprietors of land parcel numbers KAJIADO/ DALALEKUTUK/ 6870 – 6919 which they acquired after exercising due diligence and transfers were effected in their favour. She contends that on 14<sup>th</sup> December, 2016 they applied for official searches to the aforementioned parcels of land. She confirms that they were subsequently issued with Certificates of Official Searches on 21<sup>st</sup> December, 2016 which revealed that a Restriction had been registered under the instructions of the Respondents against their titles without any colour of right. She insists they were not notified of the registration of the restriction and efforts to have the

Respondents remove the Restriction have not been successful.

I note at this stage the Applicants are merely seeking leave to apply for orders of mandamus and prohibition.

Order 53 Rule 1 of the Civil Procedure Rules provide that:’ **(1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule. (2) An application for such leave as aforesaid shall be made ex parte to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on. (3) The judge may, in granting leave, impose such terms as to costs and as to giving security as he thinks fit including cash deposit, bank guarantee or insurance bond from a reputable institution.(4) The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise: Provided that where the circumstances so require, the judge may direct that the application be served for hearing inter partes before grant of leave. Provided further that where the circumstances so require the judge may direct that the question of leave and whether grant of leave shall operate as stay may be heard and determined separately within seven days.’**

In relying on the facts as presented including the above cited legal provisions, I hereby grant the Applicants leave of 21 days to institute a substantive motion for mandamus and prohibition.

I further order that the leave so granted do operate as a stay of any restrictions, caution, caveat, changes, dealings and or transactions on land parcel numbers KAJIADO/ DALALEKUTUK/ 6870 – 6919.

Costs will be in the cause.

**Dated and delivered at Kajiado this 4<sup>th</sup> Day of April, 2019**

**CHRISTINE OCHIENG**

**JUDGE**