



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT MILIMANI

ELC JR CASE NO. 58 OF 2018

REPUBLICAPPLICANT

VERSUS

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

THE CHIEF LAND REGISTRAR.....2ND RESPONDENT

THE DIRECTOR OF SURVEYS.....3RD RESPONDENT

EX PARTE

OYSTER VILLAGE LIMITED

RULING

1. The Applicant herein filed a Notice of Motion dated 15th November, 2018 in which it sought the following orders:-

(1) Spent

(2) Spent

(3) That pending the hearing and determination of this suit, this Honourable Court be pleased to issue Conservatory Orders stopping the 1st, 2nd and 3rd Respondents or their agents, servants or employees from implementing the decision by the 1st Respondent contained in the Determination dated 23rd March, 2018 to cancel the amalgamation of land title numbers Nairobi/Block 82/1765 and Nairobi/Block 82/1767;

(4) That this Honourable Court be pleased to grant any other relief it may deem fit and expedient to grant in the circumstances;

(5) That costs of this Application be in the cause.

2. The Applicant had moved to Court on 5th September, 2018 and filed an application for leave to commence judicial review proceedings. The Applicant was granted leave to commence judicial review proceedings but the leave was not to operate as stay of the determination of the 1st Respondent made on 23rd March, 2018.

3. The Applicant filed the motion for judicial review on 8th October, 2018. The Applicant thereafter filed the present application. The Applicant had purchased two parcels of land from Shephard Group of Companies. The two parcels were Nairobi Block 82/1765 and Nairobi Block 82/1767 comprising 2 hectares and 3 hectares respectively. The Applicant then applied for amalgamation of the two titles which then became Nairobi Block 82/9102 (suit property).

4. The Applicant proceeded to develop part of the suit property on which it erected 68 maisonettes, 28 apartments and 13 community shops which it named Oyster Village Estate. The houses have since been sold to third parties who have occupied the same.

5. In or around 2016, a body calling itself Savannah Jua Kali Association made a complaint to the 1st Respondent regarding various parcels including the suit property. The 1st Respondent conducted a review of the grants pursuant to its mandate and thereafter made a determination on 23rd March, 2018. In the determination the 1st Respondent found that the amalgamation of Nairobi Block 82/1765 and Nairobi Block 82/1767 was illegal and proceeded to cancel the amalgamation and directed the Director of Surveys to revert the amalgamated title to its

original status.

6. The 1st Respondent further directed that the Chief Land Registrar do issue title in respect of Nairobi Block 82/1765 to Savannah Jua Kali Members and that Nairobi Block 82/1767 do remain with the Applicant but the Applicant compensates Savannah Jua Kali at current market rates. The determination regarding Nairobi Block 82/1767 was however amended through Gazette Notice of 15th February, 2019 which directed that the parcel be registered in the name of Nairobi County Government.

7. The Applicant now contends that if the determination by the 1st Respondent is implemented, the Applicant and the persons who have purchased units in the Estate will suffer and the pending Judicial Review application will be rendered nugatory.

8. The 1st Respondent opposed the Applicant's application based on grounds of opposition dated and filed in Court on 17th December, 2018. The 1st Respondent contends that the application is scandalous, frivolous and vexatious and that it offends the provisions of Order 53 Rule 2 of the Civil Procedure Rules.

9. I have carefully considered the Applicant's application as well as the opposition to the same by the 1st Respondent. I have also considered the submissions by the Applicant's Counsel and the 1st Respondent's Counsel during the hearing of this application. The only issue for determination is whether the Court should grant conservatory orders.

10. I have looked at the determination by the 1st Respondent. The suit property is as a result of subdivision of LR Nairobi Block 82 which was about 1,200 acres. This land was owned by Continental Developers Limited who subdivided it and as a condition for sub-division, surrendered part of the land for public utilities. During the hearing by 1st Respondent, the Counsel for Continental Developers Ltd was present. He submitted that the only parcels which were surrendered for public utilities were Nairobi Block 82/6192 surrendered for a public primary school and Nairobi Block 82/7856 surrendered for a public secondary school.

11. It is clear from the determination that the 1st Respondent was unable to establish that there were other parcels surrendered for public purposes. The Nairobi County Government who are the successors of Nairobi City Council were present during the hearings. The County Government did not have records for a number of parcels. The 1st Respondent observed that the owners of the original land were supposed to surrender at least 20% of the land which is about 245 acres.

12. This being the case, the Applicant has demonstrated that there is need to have conservatory orders to preserve the suit property as it pursues its application for Judicial Review Orders. The suit property was not found to be one of those which had been surrendered for public purposes. The Applicant's application is not vexatious. There are over one hundred (100) persons who have their homes in the suit property. There is no evidence that they were involved in the hearing. There is also no evidence that the Applicant participated in the hearings which led to determination by the 1st Respondent.

I therefore find that the Applicant has made out a case for grant of conservatory orders. I therefore allow the Notice of Motion dated 15th November, 2018 in terms of prayers (3) and (5).

It is so ordered.

Dated, Signed and delivered at Nairobi on this 30th day of May, 2019.

E.O.OBAGA

JUDGE

Delivered in the absence of parties who were aware of the date and time of delivery of Ruling.

Court Assistant - Hilda