



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

JUDICIAL REVIEW NO. 4 OF 2014

IN THE MATTER OF: AN APPLICATION BY KWANYA KIRONDA CHIKO FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS FOR MANDAMUS

AND

IN THE MATTER OF: THE LAND REGISTRATION ACT NO. 3 OF 2012, THE LAND ACT NO. 6 OF 2012 AND THE REGISTERED LAND ACT (CAP 300) NOW REPEALED.

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

1. LAND REGISTRAR, KILIFI.....RESPONDENT

2. JAMES MWANGI GAKAHU.....1ST INTERESTED PARTY

3. SETTLEMENT FUND TRUSTEE..2ND INTERESTED PARTY

AND

KWANYA KIRONDA CHIKO.....EX-PARTE APPLICANT

JUDGMENT

1. By a Notice of Motion application dated 9th May 2014, the ex-parte Applicant Kwanya Kironda Chiko prays for an order of Mandamus to compel the Land Registrar, Kilifi to cancel all entries made in respect of all that parcel of land known as Kilifi/Kijipwa/4 in favour of the 1st Interested Party –James Mwangi Gakahu and to compel the said Registrar to issue another title in favour of the Ex-parte Applicant.

2. The said application is supported by an Affidavit sworn by the Ex-parte Applicant and is premised on the grounds that:-

i) The Applicant was allocated the said parcel of land measuring 1.008 Ha vide a Letter of Allotment dated 17th July 1985;

ii) The Applicant accepted the offer and made the requisite payments to the Settlement Fund Trustees on 26th January 1988;

iii) The Land Registrar irregularly and unlawfully issued a Title Deed to the 1st Interested Party herein.

3. In a Replying Affidavit sworn on 18th September 2014 and filed herein on 9th October 2014, the Land Registrar M.S Chinyaka avers that according to the records at the Land Registry, the register for Kilifi/Kijipwa/14 was opened on 8th August 1990 under the 1st Interested Party's name. On 14th February 2002, a transfer document was registered and a title deed was issued in his name.

4. The Respondent further avers that the land has since never been transferred to anyone else and he has no power to cancel the entries made in the name of the 1st Interested Party and/or to replace them with the name of the Ex-parte Applicant.

5. I have considered the application and the response thereto by the Honourable the Attorney General on behalf of the Respondent. Both the 1st and 2nd Interested Parties never entered appearance.

6. On 18th June 2014, the Honourable Justice Angote directed upon application by the Ex-parte Applicant that the 1st Interested Party be served by way of Substituted Service. I did not find any evidence whatsoever of any such service and this Court will be reluctant to make any orders adverse to him in that regard.

7. At any rate, I have considered the oral submissions made before me by the Ex-parte Applicant and the Respondent. As it were, mandamus is a prerogative order issued in certain cases to compel the performance of a duty. It issues from the Court where the injured party has a right to have anything done, and has no specific means of compelling its performance, especially when the obligation arises out of the official status of the Respondents.

8. An order of mandamus is in that regard issued to compel public officers to perform duties imposed upon them by common law or by statute. Mandamus as has been said, is neither a writ of course nor of right, but it will be granted if the duty is in the nature of a public duty and especially affects the rights of an individual, provided there is no more appropriate remedy.

9. In the matter before me, there was no evidence placed before me to demonstrate that the Respondent was under any statutory or legal duty to cancel the 1st Interested Party's name and/or to replace the same with the Ex-parte Applicant's name.

10. While the Ex-parte Applicant contends that he was allocated the suit property, the Letter of Allotment is not annexed to the application. Nor is there evidence to show that the Applicant acquired the parcel of land as per the terms of allotment. At paragraph 6 of the Supporting Affidavit, the Ex-parte Applicant concedes that he has not completed repayment of the loan to the Settlement Fund Trustees (the 2nd Interested Party).

11. In that regard, I was unable to see on what basis the Ex-parte Applicant seeks to compel the Respondent to issue him with title to the suit property.

12. In the result, I do not find any merit in the application dated 9th May 2014. The same is dismissed with costs to the Respondent.

Dated, signed and delivered at Malindi this 29th day of May, 2019.

J.O. OLOLA

JUDGE