



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT KISII**

**MISC. APP. NO. 8 OF 2018**

**IN THE MATTER OF ORDER 53 RULE 3 OF THE CIVIL PROCEDURE RULES 2010**

**AND**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW OF THE DECISION BY THE SENIOR LAND REGISTRAR DIRECTING REVOCATION OF THE TITLE DEEDS ISSUED TO JOSEPH OYIEKO OBAGA AND CANCELLING HIS PROPRIETARY RIGHTS THEREOF**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**AND**

**THE DISTRICT LAND REGISTRAR, NYAMIRA.....RESPONDENT**

**RULING/DIRECTIONS**

1. On 12<sup>th</sup> November 2018 the ex parte applicant filed a Notice of Motion for judicial review following grant of leave on 23<sup>rd</sup> October 2018. By the Notice of Motion the ex parte applicant sought the following orders:

**(a) An order of certiorari be and is hereby issued to remove into the High Court for purposes of its being quashed a decision made by the Senior Land Registrar, Nyamira County whereby it was adjudged and/or decided that the title deeds issued to Joseph Oyieko Obaga be revoked and proprietary rights conferred thereof be cancelled from the register.**

**(b) An order of Mandamus be and is hereby issued compelling the Land Registrar, Nyamira County to reverse his decisions whereby it was adjudged and/or decided that the title deeds issued to Joseph Oyieko Obaga be revoked and proprietary rights conferred thereof be cancelled from the register and that he further reaffirms the title deeds issued to Joseph Oyieko Obaga and re-enter, in the appropriate register, the proprietary interests vested upon Joseph Oyieko Obaga in relation to the title deeds thereof.**

**(c) A declaration that the judgment and/or decision made by the Senior Land Registrar, Nyamira County whereby it was adjudged and/or decided that the title deeds issued to Joseph Oyieko Obaga be revoked and proprietary rights conferred thereof be cancelled from the register was and is invalid, ultra vires and void and of no effect.**

**(d) An order for costs.**

2. The Ex parte Applicant averred that on 8<sup>th</sup> of February 2016 the title for land parcel **Central Kitutu/Bogetaorio/564** was lawfully subdivided into land parcels **3187** and **3188** which were duly registered in the names of Clement Obaga Mosei and Joseph Oyieko Obaga respectively. The copies of the annexed titles show that the original title for parcel **564** was registered in the name of Obaga Mosei and that land parcels **3187** and **3188** which were subdivisions from the parcel of land were registered and title issued to the aforesaid on 8<sup>th</sup> February 2016.

3. The Ex parte Applicant averred that on the 1<sup>st</sup> July 2016 the Land Registrar cancelled and annulled the title that was issued to him and issued the title to Clement Obaga Mosei as the sole registered owner. This is the decision the Ex parte Applicant wants to be quashed. The Ex parte Applicant has however not demonstrated that indeed the Land Registrar made such a decision. The Ex parte Applicant has not exhibited any abstract of title, search or copy of title to show the title issued to him was cancelled.

4. Besides, the Ex parte Applicant avers that after his title was cancelled and/or nullified the title was issued in the name of Clement Obaga Mosei. The order the Ex parte Applicant seeks if granted, would directly affect the said Clement Obaga Mosei in a prejudicial manner and

he would not have been afforded the opportunity of being heard. That would be in contravention of the rules of natural justice and Article 47 of the Constitution and Section 4 of the Fair Administrative Action Act 2015. In the premises, the Court is of the view that Clement Obaga Moseti ought to have been enjoined in the application as an Interested party as he stood to be affected by the order that the applicant sought to be made to quash the decision of the Land Registrar, Nyamira that had resulted in the said Clement Obara Moseti being registered as the sole proprietor of the suit land. He was a necessary party in these proceedings and should have been enjoined.

5. Order 53 Rule 3(2) of the Civil Procedure Rules provides that where leave is granted to apply for Judicial Review the notice shall be served on all persons directly affected. Order 53 Rule 3(4) provides as follows:

**53(3)(4) If on the hearing of the motion, the High Court is of the opinion that any person who ought to have been served has not been served, whether or not he is a person who ought to have been served under the foregoing provisions of this rule, the High Court may adjourn the hearing in order that the notice may be served on that person, upon such terms (if any) as the Court may direct.**

6. Having formed the opinion that the said Clement Obaga Moseti would be directly affected by any orders the Court may make in this matter, I direct that he be enjoined in these proceedings and that he be served with the Notice of Motion as an Interested Party. Upon being served, he will be entitled to file a response to the Notice of Motion within 21 days of such service. The direction/order given on 7<sup>th</sup> May 2019 that judgment would be delivered on 14<sup>th</sup> June 2019 is hereby vacated and in its place the Court directs that the matter be mentioned on 18<sup>th</sup> July 2019 to confirm service on the Interested Party as directed herein and for further directions.

7. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED AT KISII THIS 14<sup>TH</sup> DAY OF JUNE 2019.**

**J. M. MUTUNGI**

**JUDGE**