



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO 47 OF 2013

REPUBLIC.....APPLICANT

VERSUS

THE DIRECTOR OF LAND ADJUDICATION &

SETTLEMENT DEPARTMENT.....RESPONDENT

EX-PARTE

STEPHEN MUCHOFONYORI

AND

NANCY NJOKI MBURU.....APPLICANT/

INTENDED INTERESTED PARTY

RULING

(Application to set aside judgment on a judicial review motion; the ex-parte applicant seeking orders of mandamus to compel the Director of Land Adjudication to subdivide a certain parcel of land so that the ex-parte applicant can get title to one of the portions; applicant herein claiming that she also has a claim over the same land; given her interest, applicant needed to be enjoined to these proceedings; application allowed and judgment set aside; further orders that other parties who appear interested in the subject matter also be enjoined to this suit)

1. The application before me is that dated 27 July 2018 filed by one Nancy Njoki Mburu who has averred that she is an interested party to these proceedings. The application seeks orders that there be a stay of execution of the judgment and that the orders of 29 March 2018 be set aside and/or reviewed. The applicant further wishes to be allowed to participate in these proceedings and oppose the substantive motion herein which was filed on 16 October 2014.

2. The suit itself is a judicial review motion for orders of mandamus which sought to compel the Director of Land Adjudication to have the parcel title number Nyandarua/Salient/905 subdivided and for the mutation forms to be registered, so as to enable the ex-parte applicant get title for the land parcel number Nyandarua/Mawingo/Salient/1794.

3. In her motion, the ex-parte applicant stated that one Julius Kiplangat Bonde was allocated part of Plot No. 905 measuring approximately 2 Ha, in Mawingo Salient Settlement Scheme. The ex-parte applicant averred that he purchased 2 ½ acres of the land from the said Julius Kiplangat Bonde. There is another purchaser mentioned, one Shadrack Gakuru, who it is said had earlier purchased 2 ½ acres as well from Julius Kiplangat Bonde. There is mention that the said Plot No. 905 was jointly owned by the said Julius Kiplangat Bonde and Nancy Njoki (the applicant herein) in equal shares with Julius keeping the land parcel Nyandarua/Mawingo Salient/1794 and the applicant the land parcel Nyandarua/Mawingo Salient/1793. The ex-parte applicant stated that he and Shadrack Gakuru, took their transfer documents to the Lands offices which were acknowledged by the Land Registrar. However, no survey work was done and it is this which prompted the ex-parte applicant to file this suit to compel the Director of Land Adjudication to have the parcel number Nyandarua/Mawingo Salient/905 subdivided and the mutation form registered so as to enable him and Shadrack Gakuru get their titles.

4. The suit was opposed through the replying affidavit of John Welangai, the District Land Adjudication and Settlement Officer, Nyandarua North. He deposed that according to their records, the parcel number Nyandarua/Salient/905 was allocated to two persons, that is, Julius Kiplangat Bonde and Nancy Njoki (the applicant) through letters of offer dated 15 January 1999. He deposed further that according to their

records, Julius sold his share to Shadrack G. King'ori through a sale agreement dated 15 February 2001. He mentioned that Julius sold this land without having made any payment for the plot and without having been documented. He stated that sometimes in the year 2003, the whole of the land parcel Nyandarua/Salient/905 was allocated to Nancy Njoki (the applicant) who paid for it and is currently awaiting a discharge of charge. He stated that Shadrack G. King'ori was to be compensated with a Plot No 152-Mbuyu Scheme. He has averred that on 28 December 2018, the land parcels Nyandarua/Salient/905 and Plot No. 152-Mbuyu Settlement Scheme were visited with a view to resolving a dispute arising from the land Nyandarua/Salient/905. It was then recommended that Nancy Njoki be allocated the whole of the land parcel Nyandarua/Salient/905 and that Shadrack G. King'ori be compensated with Plot No. 152-Mbuyu Settlement Scheme. He has stated that their office is not able to issue title deeds to the parcel of land while the discharge of charge is yet to be effected.

5. In her ruling, the learned judge, (Roseline Korir J) was of the view that there was ample evidence that the ex-parte applicant purchased land from Mr. Kiplangat. The court also held that Nancy Njoki had no superior right over the other allottees. The order of mandamus was thus granted.

6. In this application, Nancy Njoki has asserted that she is the legal owner of the Plot No. 905 having been allotted the same and having fully paid for it as an outright purchase. She has stated that prior to her purchase, she had been resident in the land for over 20 years. She has given a history of how she applied for the land and how the same was eventually allotted to her. She learnt of these proceedings after some strangers came to the land with the intention of verifying who was in possession. She has stated that the issues herein related to her land, Plot No. 905 and that she was thus a necessary party.

7. The application is opposed by the ex-parte applicant. He more or less repeated the averments in his original affidavit and statement of facts. He asserted that he and Mr. Shadrack Gakuru each purchased 2 ½ acres of land from Julius Kiplangat Bonde and that the Ministry of Lands and Adjudication signed the transfer forms, which he paid for. He is of the view that the applicant colluded to have the land belonging to Mr. Kiplangat, given to her alone. He has also stated that there no longer exists the Plot No. 905 as this was divided between the applicant and Mr. Kiplangat.

7. I have considered the matter alongside the written submissions of both counsel for the applicant and the ex-parte applicant.

8. For the record, I am hearing this application because Justice Roselyne Korir was transferred from this station and thereafter the file was transferred from the High Court to the Environment and Land Court, this being a land matter.

9. It is common ground that the land that is subject to this dispute was (or probably still is) the land parcel Nyandarua/Salient/905. It is the contention of the ex-parte applicant that this land was subdivided into the land parcels Nyandarua/Salient/1973 and 1974, one portion being given to Mr. Kiplangat and the other portion being given to the applicant. The applicant of course refutes this, and claims that the whole of the land parcel No. 905 is intact and that it was allocated to her. The position of the respondent to the motion is that Mr. Kiplangat never paid for his allocation and the same was thus given to the applicant. They also only recognize Shadrack Gakuru as the sole purchaser and the ex-parte applicant is a stranger to them. Their position is that the land that exists is Plot No. 905 and they claim that this land belongs to the applicant.

10. I am persuaded that the applicant has an interest in the land under litigation. The issue of whether or not she has a good title is not for determination within the context of this application. What I need to determine is whether she has an interest in the land in dispute and whether she was entitled to be heard before a judgment was made. It is a cardinal principle of law that one deserves to be heard before decisions that affects the person's interest are made. It is clear to me that the applicant has an interest in the land in dispute and she was not made a party to the proceedings thus was never heard before the judgment was delivered. If the judgment herein is effected, it will result in the applicant losing her land, but she will not have been heard, and that would be against the rules of natural justice. The applicant thus needed to be enjoined to these proceedings.

11. In fact after hearing this application, I am of the view that it is not only the applicant who needed to be enjoined to these proceedings, but also Mr. Shadrack Gakuru and Mr. Julius Kiplangat Bonde. They also have a stake or say in the matter at hand, and it is important that they be given an opportunity of being heard.

12. For the above reasons, I allow this application. I hereby set aside the judgment/ruling of 29 March 2018. I further direct that the applicant be enjoined to this suit as interested party, and she is at liberty to file an affidavit in response to the main motion within the next 14 days. In addition, I also order that Shadrack Gakuru and Julius Kiplangat Bonde, be enjoined as additional interested parties. Upon service, they are also at liberty to file their respective affidavits, within 14 days.

13. The applicant will have the costs of this application as against the ex-parte applicant.

14. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 12th day of June 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of :-

Ms. Wangari for the applicant.

Ms. Njoroge for the ex-parte applicant.

No appearance for the respondent.

Court Assistants : Janepher Nelima/Patrick Kemboi.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU