



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

JUDICIAL REVIEW MISC APPLICATION NO. 16 OF 2017

REPUBLIC.....APPLICANT

VERSUS

THE NATIONAL LAND COMMISSION.....RESPONDENT

CHARO KOMBE.....1ST INTERESTED PARTY

PAUL MUTEKI.....2ND INTERESTED PARTY

TERESI MWANGEKA.....3RD INTERESTED PARTY

EXPARTE APPLICANT

1. ASHOK LABHSHANKER DOSHI

2. MOHAMED HUSSEIN JAFFER

JUDGMENT

1. By this Judicial Review application dated 10th October 2017 as amended on 20th November 2017, Ashok Labhshanker Doshi and Mohamed Hussein Jaffer (the Ex-parte Applicants) pray that:-

1. An order of Certiorari do issue to remove into the Environment and Land Court and quash a decision of the Respondent communicated through Gazette Notice No. 6862 contained in Vol CXIX-No 97 dated 17th July 2017 directing the Commissioner of Lands to revoke the Applicant's title over property known as LR No. 17439(Grant No. CR 212/1) situate in Mariakani Sub-County in Kilifi County.

2. An order of Prohibition to prohibit the Respondent, the Interested Parties, the Registrar of Lands or any other person from revoking the Applicant's title over property known as LR No. 17439(Grant No. 212/1) situate in Mariakani Sub-County in Kilifi and from issuing a new title in favour of the Interested Parties or any other person without consent or authority of the Ex-parte Applicants.

2. The application is grounded upon the facts set out in the Statutory Statement and the Verifying Affidavit accompanying the application for leave sworn by Ashok Labhshanker Doshi, one of the Ex-parte Applicants on 30th October 2017.

3. It is the Ex-Parte Applicants' case that they are the registered owners of the parcel of land known as LR No. 17439(Grant No. CR 212/1) situate in Mariakani having acquired the same from a company known as Great Lakes Ports Ltd on 12th September 2014.

4. The Applicants aver that prior to the transfer of the suit property to their name, the said Great Lakes Ports Ltd was involved in a Court case against the Interested Parties herein together with the County Council of Mariakani, it being Mombasa ELC No. 79 of 2012.

5. The said case proceeded to full hearing and on 2nd July 2015 the Court granted a declaration that the Defendants (who included the Interested Parties herein) had trespassed on the suit property and a permanent injunction was issued restraining them from entering upon, interfering with and/or having any dealings with the suit property.

6. The Ex-parte Applicants assert that despite the issue of ownership of the suit property having been settled and the Interested Parties herein being declared trespassers over the property, the National Land Commission (the Respondent herein) through the said Gazette Notice No. 6862 dated 17th July 2017 purported to direct the Commissioner of Lands to revoke the Applicant's title over the suit property.
7. In view of the foregoing, the Ex-parte Applicant accuse the Respondent of acting illegally and unprocedurally, violating their right to own property and to fair administrative action and acting without jurisdiction. They therefore urge this Court to grant the orders sought in their application.
8. The application is opposed. In a Replying Affidavit sworn by its Director Legal Affairs Brian Ikol and filed herein on 15th February 2018, the Respondent avers that it is an independent Commission established under Article 67(1) of the Constitution and operationalized by the National Land Commission Act, No. 5 of 2012, and that its fundamental functions include the management of public land on behalf of the National and County Governments.
9. The Respondent further avers that under Section 14 of the National Land Commission Act, it is mandated to review all grants and dispositions of public land either on its own motion or upon receipt of a complaint with a view to establish their legality or propriety. In the exercise of that mandate, the Applicant operates as a quasi-judicial body.
10. In the exercise of that mandate, the Respondent avers that it did undertake a review of the legality of the grant over the suit property herein and that following notices that it published in the dailies, all interested parties appeared before it and were afforded the chance to submit in respect of their claims either by way of oral or written submissions.
11. The Respondent further avers that despite the notice given of its intention to review the legality of the Applicants' title and their actual knowledge of the proceedings, the Applicants herein neglected and/or refused to participate in any of the proceedings and to furnish the Respondent with any documents in respect of their claim. The Respondent ultimately made a finding that the subject grant was acquired in an unlawful manner and directed its revocation.
12. Despite substituted service published in the Standard Newspaper of 18th December 2017, Charo Kombe, Paul Muteki and Teresi Mwangeka (the Interested Parties) neither entered appearance nor filed a response to the application.
13. I have perused the substantive application and the response by the Respondent. I have equally perused and considered the Written Submissions placed before me by Mr. Oluga, Learned Counsel for the Ex-parte Applicants and Mr. Wahome Learned Counsel for the Respondents. I have in addition considered the authorities to which the Learned Advocates referred me.
14. The Ex-parte Applicants aver that they are registered proprietors of the suit property having acquired the same from a company known as Great Lakes Ports Ltd. They assert that prior to the purchase of the land, the said Great Lakes Ports Ltd was involved in a legal tussle with the Interested Parties and other claimants to the suit property in Mombasa ELC Case No. 79 of 2012; **Great Lakes Ports Ltd –vs- Paul Muteke & 3 Others**.
15. The Applicants further assert that by a decision rendered on 2nd July 2018, the Defendants in the said case who included the Interested Parties herein were declared trespassers into the suit property and were thereby restrained by a permanent injunction from entering upon, interfering with or dealing in any manner with the suit property.
16. The Ex-parte applicants are aggrieved that despite the fact that the issue of ownership of the suit property was settled in the said Mombasa ELC Case No. 79 of 2012 aforesaid, the Respondent has proceeded without giving them a hearing to direct the Commissioner of Lands to revoke their title over the suit property.
17. The Respondent does not deny that it issued such directives. It is however their case that the Applicants spurned a notice they had issued in regard to a scheduled hearing on the legality and/or propriety of the Applicant's title and that they were thus compelled as a quasi-judicial body to render a decision based on the material that was before them.
18. It is the Respondents case that the proceedings before it being quasi-judicial in nature, it was the Ex-parte Applicants' prerogative to appear before it and to bring to light the fact of the existence of the said ELC Case No. 79 of 2012.
19. I note however that the Replying Affidavit of Brian Ikol has not annexed copies of any notices that were allegedly served upon the Ex-parte Applicants either directly or through publication in the dailies as stated therein. Neither does it show whether the Commission was seized of this matter suo motto or out of a complaint filed before it. Indeed, that Affidavit does not even show the parties who were heard in regard to the complaint on the suit properties.
20. A perusal of the impugned Gazette notice dated 17th July 2017 however identifies the Interested Parties herein as well as the Applicants as the parties that were interested in the claim.
21. As the Respondents tacitly concedes in the Replying Affidavit I did not think they had jurisdiction to handle a matter in regard to which the ELC had made a determination such as this one. If the Interested Parties appeared before them, they were duty bound to inform the Respondent of the determination made by the Court in ELC 79 of 2012 aforesaid.
22. Otherwise it is my view that the Respondent could not re-open the issue of the propriety or legality of the suit property once this Court had made a determination thereon.

23. As it were, an order of certiorari is used to bring to the High Court the decision of some inferior tribunal or authority for it to be quashed or declared invalid for having been made ultra vires. The Respondent's impugned decision was clearly beyond its authority.

24. Accordingly I will allow the Amended Notice of Motion dated 20th November 2017 as prayed.

25. I make no order as to costs.

Dated, signed and delivered at Malindi this 30th day of July, 2019.

J.O. OLOLA

JUDGE