



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**JUDICIAL REVIEW NO.3 OF 2019**

**DOMINIC MUKUI KIMATTA.....APPLICANT**

**VERSUS**

**NATIONAL LAND COMMISSION.....RESPONDENT**

**AND**

**SAMSON KIPLAGAT NG'ETICH.....INTERESTED PARTY**

**RULING**

***(Application for joinder as interested party and for setting aside of stay orders; suit being one of judicial review to quash a decision of the National Land Commission; orders staying the implementation of the decision granted when leave to commence judicial review proceedings was granted; applicant being the person who presented the complaint before the Commission; applicant clearly having an interest in the matter; applicant allowed to join the proceedings as interested party; court however declines to set aside the orders of stay for if they are vacated and the impugned decision implemented, the proceedings may be rendered nugatory)***

1. The application before me is that dated 9 April 2019 filed by one Samson Kiplangat Ngetich who has sought two substantive prayers being prayers (2) and (3) in the application. The applicant wishes to be enjoined as interested party in this suit and also wishes to have set aside the orders of stay issued on 20 March 2019 when leave to commence this Judicial Review was granted.

2. The genesis of the matter is that on 20 March 2019, the ex-parte applicant filed an application seeking leave to commence judicial review proceedings for orders of certiorari, to quash the proceedings of the respondent, the National Land Commission, contained in a letter/document dated 15 January 2019. The ex-parte applicant also sought a stay of the implementation of the decision contained in the said letter dated 15 January 2019. In his application, the ex-parte applicant averred to be the registered owner of the land parcel Dundori/Muguathi Block 2/81 which he stated to have purchased in the year 2012 from the previous owner, one Rael Kandagor. He took possession of the land and ploughed it in the year 2013 when some persons trespassed into it. He filed suit against them, being Nakuru ELC No. 317 of 2013, *Dominic Mukui Kimatta vs Regina Ngoiri & 8 Others*. He deposed that he later learnt that the first 8 defendants were victims of a claim by the 9<sup>th</sup> defendant who alleged to own the suit land. He withdrew the suit against the first 8 defendants and proceeded only against the 9<sup>th</sup> defendant. That 9<sup>th</sup> defendant in the said suit is Samson Kiplangat Ngetich, the applicant herein. The case was heard and judgment delivered on 29 March 2017 in favour of the ex-parte applicant. In August 2017, the ex-parte applicant was served with a letter from the National Land Commission (NLC) summoning him to participate in proceedings aimed at determining who between the ex-parte applicant and the great grandson of the 9<sup>th</sup> defendant is the true owner of the suit land. The NLC proceeded to hear the dispute, despite objection by the ex-parte applicant, and made a decision that the property was originally allocated to Mr. Kerich Kipsoi, basically hinting that the ex-parte applicant did not get good title to the land. It is that decision which the ex-parte applicant seeks to have quashed.

3. I mentioned that this application has been filed by Samson Kiplangat Ngetich, the 9<sup>th</sup> defendant in the suit Nakuru ELC No. 317 of 2013. He has described himself as the legal representative of the estate of Kipsoi arap Kerich (deceased) who it is alleged was the original owner of the suit land. He has deposed that he is the one who lodged a complaint before the NLC.

4. In so far as the applicant wishes to be enjoined to these proceedings as interested party, I see absolutely no problem. He is the person who lodged the complaint before the NLC and he is certainly a person who has a direct interest in the outcome of this suit. He may also wish to supply the court with material which will assist the court in arriving at a just decision in this matter. I will therefore allow the first limb of the application for his joinder as interested party.

5. I am not however persuaded to grant the second limb of the application, that is, to vacate the order of stay to stop the implementation of the decision of the NLC. It is that decision which is the subject of these proceedings and unless the stay order remains in force, these proceedings may be rendered nugatory. The second limb of the application, that seeks to vacate the orders of stay, is hereby rejected.

6. I will make no orders as to costs.

7. Orders accordingly.

**Dated, signed and delivered in open court at Nakuru this 24<sup>th</sup> day of July 2019.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of : -**

Mr. Ooga holding brief for Mr. Larabi for applicant.

No appearance on the part of M/s Karanja Mbugua & Co for ex-parte applicant.

No appearance on the part of the NLC- Respondent

Court Assistants- Nelima Janepher/Patrick Kemboi

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**