



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO.52 OF 2008

REPUBLIC.....APPLICANT

VERSUS

MUNICIPAL COUNCIL OF NAIVASHA.....1ST RESPONDENT

DIRECTOR OF PHYSICAL PLANNING2ND RESPONDENT

AND

SUSAN WANJIRU WANG'OMBE.....INTERESTED PARTY

EX-PARTE ESTHER WANJIRU

RULING

(Application to enforce orders issued by court; orders issued to interested party and respondent; orders not effected; applicant allowed to enforce the same)

1. The application before me is that dated 9 February 2018, filed by the ex-parte applicant. The application seeks the following principal order :-

That this Honourable Court be pleased to grant the Subject (ex-parte applicant) leave to engage her private Land Surveyor so that he can clearly restore the position of the Subject's (ex-parte applicant's) parcel of land Number 86 Naivasha Municipal Council as per the Approved Plan No. 78 and demarcate and beacon the same and to appoint John Muthee Ngunjiri trading as Tango Auctioneers to demolish all the structures, fences and buildings on Plot No. 86 Naivasha Municipal Council and deliver vacant possession thereof to the ex-parte applicant.

2. The main reason given is that the respondent and interested party, have failed to implement the court judgment of 22 April 2016.

3. By way of background, this suit was filed seeking orders of certiorari, inter alia to quash development plans No. R59/90/3 and R59/91/2, which were claimed to be unapproved, and which affected the ex-parte applicant's plot No. 86 which was contained in a previously approved plan. After assessing the case, I delivered judgment on 22 April 2015. I found that there had been a development plan of 1982, identified as Plan No. R59/82/1, which was superceded by the Plan No. R59/90/3 (the 1990 plan). I found that it is through the 1990 plan that the ex-parte applicant's plot No. 86 was created. The interested party's plot No. 199, was also created through this plan. I found further that there was a plan R59/91/2 which was

unapproved, and which relocated the interested party's plot No. 199, so as to interfere with the ex-parte applicant's plot No. 89. I held that the existing development plan is the 1990 plan and there was no other approved plan which superceded it. I further held that all developments within the area in issue can only follow the plan of 1990 and no other. I made orders quashing the unapproved plans and also issued orders of mandamus to compel the respondents to cause the demolition of any developments carried out on the Plot No. 199 as reflected in the quashed development plan. I gave the interested party, 90 days, to demolish the structures reflected in this plot, and restore the land to its original position. If she did not do so, I issued an order of mandamus compelling the County Government of Nakuru, to proceed to do so.

4. In this application, the ex-parte applicant has complained that the interested party has not moved to implement the court order and so too the County Government of Nakuru. That is why the ex-parte applicant now wishes to resort to the self help measure that she has proposed in this application. Whereas I am not too sure why the ex-parte applicant does not wish to cite the interested party and/or respondent for contempt, I am persuaded that the ex-parte applicant is entitled to the fruits of her judgment. If the interested party and the County Government of Nakuru are not willing to do their part, I am unable to hold back the ex-parte applicant, considering all circumstances of this suit.

5. I therefore allow the application. The ex-parte applicant is at liberty to proceed and engage a Land Surveyor to identify the Plot No. 86 in the approved plan, which is Plan No. R59/90/3, and also engage the court broker that he has identified to proceed and remove any buildings or structures on the land and to put the ex-parte applicant in possession thereof. Any costs that the ex-parte applicant stands to incur to be passed over to the County Government of Nakuru.

6. The ex-parte applicant shall also have the costs of this application as against the County Government of Nakuru.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 28th day of February 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In the presence of:-

Mr. Karanja Mbugua for the ex-parte applicant.

No appearance on the part of the respondents.

Court Assistant: Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU