



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**JR. CASE NO. 51 OF 2017**

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO  
APPLY FOR JUDICIAL REVIEW ORDERS OF CERTIORARI**

**AND**

**IN THE MATTER OF: ARTICLES 2, 10, 19, 20, 21, 22, 23, 40,  
47, 64(B) 67 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF: SECTIONS 8 AND 9 OF THE  
LAW REFORM ACT CAP 26 LAWS OF KENYA**

**AND**

**IN THE MATTER OF: ORDER 53 OF THE CIVIL PROCEDURE RULES**

**AND**

**IN THE MATTER OF: SECTIONS 7, 8,9,10 AND 11 OF  
THE FAIR ADMINISTRATIVE ACTION ACT , 2015**

**AND**

**IN THE MATTER OF: THE NATIONAL LAND COMMISSION ACT NO. 5 OF 2012**

**AND**

**IN THE MATTER OF: SUCCINCT PRINCIPLES OF NATURAL JUSTICE  
PLACID VIEW PROPERTIES LIMITED.....EXPARTE APPLICANT**

**- VERSUS -**

**NATIONAL LAND COMMISSION.....1ST RESPONDENT**

**CHIEF LAND REGISTRAR.....2ND RESPONDENT**

**RULING**

1. On 19/12/2017, the ex-parte applicant, Placid View Properties Limited brought a Chamber Summons Application under **Order 53 Rules 1 and 2 of the Civil Procedure Rules** seeking leave of this court to apply for an order of certiorari quashing **Gazette Notice No. 6862 Table 16 S/No.14** published by the respondent on 17/7/2017 in respect of Land **Ref. No. 209/12367** Nairobi. The ex-parte applicant also prays that the leave so granted do operate as stay of the said Gazette Notice.
2. The Ex-parte Applicant's case is that it is the registered proprietor of **Land Reference Number 209/12367** and **Land Reference No. 209/12148** located at the interchange of Mombasa Road and the Southern By Pass. Erected on the suit properties is a hotel premises currently going by the name Ole Sereni Hotel.
3. The ex-parte applicant contends that it acquired **L.R. No. 209/12/148** from the Government of the United States of America in 2006. It subsequently acquired LR. No 209/12367 from Swan Carriers Limited in 2007. The Ex-parte Applicant thereafter built Ole Sereni Hotel on the two suit properties. They contend that Ole Sereni Hotel is a hotel of international repute, hosting clientele from all over the world.
4. In or about 2016, they received a notice from the respondent indicating that a third party, Indian Spray Painters Limited, had lodged a complaint to the effect that the ex-parte applicant had encroached onto their property LR No. 209/11909. The 1st respondent further informed the ex-parte applicant that they had received a second complaint from the Kenya National Highways Authority with regard to the properties owned by the ex-parte applicant and M/s Indian Spray Painter Limited.
5. The ex-parte applicant contends that on 11/4/2017, the 1st respondent summoned the ex-parte applicant for a hearing slated for 18/4/2017 on the complaint made by Kenya Highways Authority (KENHA). On the said date, the ex-parte applicant attended but it was advised that the matter was taken out of the hearing list and that they would be notified of a fresh hearing date.
6. The ex-parte applicant adds that, without any hearing and without any other notification, the 1st respondent vide the impugned Gazette Notice moved to initiate the revocation of the ex-parte applicant's to the property title No L.R. No. 209/12367.
7. The ex-parte applicant contends that the 1st respondent in so doing failed to observe the rules of natural justice. It is for this reason that the ex-parte applicant seeks to have the Gazette Notice quashed.
8. I have carefully considered the facts and grounds set out in the accompanying statement and affidavit. There are two issues to be determined in this application. The first issue is whether the ex-parte applicant has made out an arguable case to warrant grant of leave to apply for an order of certiorari against the 1st respondent. The second issue is whether the ex-parte applicant has satisfied the criteria for grant of an order of stay of the impugned decision pending hearing and determination of the intended judicial review motion.
9. Through the present application, the court is invited to exercise judicial discretion in favour of the ex-parte applicant. The criteria upon which this discretion is exercised is well settled. In **Republic vs County Council of Kwale and Another; Ex-parte Kondo & 57 others (1998)/KLR (E&L) Waki J** ( as he then was) captured the rationale and purpose of leave proceedings as follows:  
  
The purpose of the application for leave to apply for judicial review is firstly, to eliminate at an early stage any application, for judicial review which are either frivolous vexatious or hopeless; and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the court is satisfied that there is a case for further consideration
10. In **UWE MEIXNER & ANOTHER vs ATTORNEY GENERAL (2005) eKLR** the Court of Appeal of Kenya held that leave of court is necessary because it served to filter out frivolous applications and the grant or refusal of leave is an exercise of judicial discretion.
11. I have evaluated the ex-parte applicant's complaint. The ex-parte applicant contends that the 1st respondent has put in motion a process to revoke its title without giving it a hearing. The right to a fair hearing cannot be gainsaid. Both Articles 47 and 50 of the Constitution require that a party be accorded a fair hearing before any adverse decision is made against it.
12. Consequently, I am satisfied that the intended judicial review motion is not frivolous. I will therefore grant the ex-parte applicant leave to bring a substantive motion and ventilate its grievances.
13. As to whether or not the leave so granted should operate as a stay, the court is to be guided by the principle of proportionality and take into account the unique circumstances of the case.
14. Sitting on the suit lands is a world class hotel contributing to the country's foreign exchange earnings and growth of the tourism industry. If the revocation process proceeds and the hotel is demolished, the ex-parte applicant will stand to suffer immensely. For this reason, I am satisfied that this is a case that calls for stay of the impugned Gazette Notice.
15. The upshot of this Ruling is that Prayers 2 and 3 of the Chamber Summons dated 18/12/2017 are granted. Costs shall be in the cause.

**Dated, signed and delivered at Nairobi on this 9th day of February 2018.**

**B M EBOSO**

**JUDGE**

**In the presence of:-**

No appearance for the Applicant

No appearance for the Respondents

Halima - Court clerk