



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC MISC. APPLICATION NO. 29 OF 2018

IN THE MATTER OF AN APPLICATION BY GEORGE MBUGUA MURITHII

FOR ORDERS OF LEAVE TO APPLY FOR ORDERS OF JUDICIAL REVIEW

AND

IN THE MATTER OF THE LAW REFORM ACT AND

ALL ENABLING PROVISIONS OF THE LAW

AND

IN THE MATTER OF SECTION 6, 7, 8, 9 10 & 14 OF THE

LAND REGISTRATION ACT 2012 AND THE CIVIL

PROCEDURE ACT CAP 21 AND RULES THEREOF,

THE CONSTITUTION 2010 LAWS OF KENYA

AND

IN THE MATTER OF LAND NO. KAJIADO/ KAPUTIEI – NORTH/ 58736, KAJIADO/

KAPUTIEI – NORTH/ 58737 AND KAJIADO/ KAPUTIEI – NORTH/ 58738

AND

REPUBLIC.....APPLICANT

VERSUS

THE ATTORNEY GENERAL.....1ST RESPONDENT

THE LAND REGISTRAR, KAJIADO.....2ND RESPONDENT

AND

GEORGE MBUGUA MURIITHI.....EX PARTE APPLICANT

RULING

What is before Court for determination is the Ex parte Applicant's Chamber Summons Application dated the 23rd May, 2018 brought pursuant to Order 53 rule 1, 2, and 3 of the Civil Procedure Rules. The ex parte applicant seeks for the following orders:

a) Spent

b) That the ex parte applicant be granted leave to apply for order of MANDAMUS compelling the Land Registrar to reconstruct the register or replace the green card in the register for KAJIADO/ KAPUTIEI – NORTH/ 58736; KAJIADO/ KAPUTIEI – NORTH/ 58737; and KAJIADO/ KAPUTIEI – NORTH/ 58738.

c) That the costs be provided for.

The application is premised on the statement of facts; verifying affidavit of GEORGE MBUGUA MURITHI; annexures to the verifying affidavit and the nature of the case.

The application is based on the grounds set out in the Statement of facts which in summary is that the ex parte Applicant is the registered owner of land parcel numbers KAJIADO/ KAPUTIEI – NORTH/ 58736; KAJIADO/ KAPUTIEI – NORTH/ 58737; and KAJIADO/ KAPUTIEI – NORTH/ 58738 whose Green Cards are missing. The 2nd Respondent has refused to replace/reconstruct the Green Cards which are missing. The refusal by the 2nd Respondent to replace/reconstruct the Green Cards is illegal, actuated by malice and ill motivate meant to deny the ex parte Applicant his properties. The actions of the 2nd Respondent offends the provisions of the Constitution, Civil Procedure Act and Rules, the Government Proceedings Act, the Land Registration Act as well as the rules of natural justice.

In his verifying affidavit the ex parte applicant GEORGE MBUGUA MURITHI, deposes that he is the owner of land parcels numbers KAJIADO/ KAPUTIEI – NORTH/ 58736; KAJIADO/ KAPUTIEI – NORTH/ 58737; and KAJIADO/ KAPUTIEI – NORTH/ 58738. He claims he has written to the Land Registrar, Kajiado requesting him to reconstruct the register for land parcels numbers KAJIADO/ KAPUTIEI – NORTH/ 58736; KAJIADO/ KAPUTIEI – NORTH/ 58737; and KAJIADO/ KAPUTIEI – NORTH/ 58738 and replace the green cards but he has ignored. He confirms that a letter was sent to the Attorney General notifying him of their intentions to institute this suit, but the Attorney General never acted on the same. He contends that the 2nd Respondent is the responsible officer mandated to issue and reconstruct registers, replace green cards and keep records of all lands in Kajiado. He reiterates that despite several reminders to the 2nd Respondent, he had refused to replace the green cards and only an order of MANDAMUS can order him to do so. He avers that the 2nd Respondent has not raised any objection to his titles and that he is unable to obtain a search, sell, obtain a loan or in any way deal with his parcels of land KAJIADO/ KAPUTIEI – NORTH/ 58736; KAJIADO/ KAPUTIEI – NORTH/ 58737; and KAJIADO/ KAPUTIEI – NORTH/ 58738 as the proprietor. He states that he is unable to force the Land Registrar Kajiado to reconstruct/ replace green cards in the register for land parcels numbers KAJIADO/ KAPUTIEI – NORTH/ 58736; KAJIADO/ KAPUTIEI – NORTH/ 58737; and KAJIADO/ KAPUTIEI – NORTH/ 58738 unless done so by the Court. He insists the actions of the 2nd Respondent have prejudiced the ex parte applicant.

Analysis and Determination

Upon perusal of the Chamber Summons dated the 23rd May, 2018 including the verifying affidavit as well as the annexures thereon and the Statement, I find that the only issue for determination is whether the Applicant is entitled to leave to commence judicial review proceedings against the Respondents.

I note that the ex parte Applicant sent a demand letter dated the 5th April, 2018 to the Land Registrar, Kajiado who is the 2nd Respondent herein, which was received on 11th April, 2018 as evidenced by the stamp on annexure ‘GMM 2’. I note the Attorney General had also been sent for a demand letter dated the 5th April, 2018 notifying him of the intentions of the Applicant to institute the judicial review proceedings.

Order 53 rule 1 of the Civil Procedure Rules stipulates that: **‘(1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule. (2) An application for such leave as aforesaid shall be made ex parte to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on.’**

In the case of **Republic vs. County Council of Kwale & Another Ex Parte Kondo & 57 Others Mombasa HCMCA No. 384 of 1996 Waki, J** (as he then was) provided the parameter for granting leave to file judicial review and stated as follows:

“The purpose of application for leave to apply for judicial review is firstly to eliminate at an early stage any applications 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 fit for further consideration. The requirement that leave must be obtained before making an application for judicial review is designed to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived... Leave may only be granted therefore if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the applicant the test being whether there is a case fit for further investigation at a full inter partes hearing of the substantive application for judicial review. It is an exercise of the court’s discretion but as always it has to be exercised judicially”.

In relying on this judicial authority as well as the legal provisions cited above, I find that the application for leave to institute Judicial Review proceedings is merited since the 2nd Respondent is the custodian of all the land records and legally mandated to reconstruct the records in case they are missing. I find that based on the materials presented before me in this instant application, there is an arguable case as claimed by the Applicant, which requires further scrutiny at the full hearing of the substantive application for judicial review. It is against the foregoing that I will allow the ex parte Applicant’s Chamber summons application dated 23rd May, 2018 and order that the Applicant do file and serve the substantive Judicial Review proceedings within the next twenty one (21) days from the date hereof.

Costs will be in the cause

Dated signed and delivered in open court at Ngong this 24th day of July, 2018

CHRISTINE OCHIENG

JUDGE