



Furncorn Ltd & Solomon Njoroge Kiore in his capacity as a done of Power of Attorney no. IP/A/64940/1) v Cabinet Secretary,(is sued in his capacity as the cabinet secretary), Ministry of Lands, Housing & Urban Development, Chief Land Registrar, Attorney General, Jonathan Munywoki Muli & Shadrack Mbai Mbiu {as the purported Administratrices of the Estate of Sheila Thompson (deceased) (Environment and Land Judicial Review Case 12 of 2017) [2018] KEELC 1576 (KLR) (20 September 2018) (Judgment)

Furncorn Ltd & another v Cabinet Secretary,(is sued in his capacity as the cabinet secretary) & 4 others [2018] eKLR

Neutral citation: [2018] KEELC 1576 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 12 OF 2017
EO OBAGA, J
SEPTEMBER 20, 2018
IN THE MATTER OF AN IRREVOCABLE POWER OF ATTORNEY AND
COVENANTS BEYOND DEATH NO IP/A 64940/1 DATED 17TH
JUNE 2015 AND REGISTERED ON 12TH OCTOBER 2015
AND
IN THE MATTER OF L.R NO. 1012/47,2,(IR.97708/1),
ROYSAMBU,NAIROBI COUNTY (4.8 ACRES)
AND
IN THE MATTER OF GAZETTER NOTICE NO.8684 OF 20/11/2015 AND
04/12/2015 REVOKING POWER OF ATTORNEY AND COVENANTS BEYOND
DEATH NO.IP/A64940/1 AS EXPOSITED BY THE CABINET SECRETARY
FOR LANDS ON 25TH NOVEMBER 2016 AND 29TH DECEMBER 2016
AND
IN THE MATTER OF ARTICLES 2,10,19,20,21,22,23,40,47,64(B)
THE CONSTITUTION OF KENYA,2010
AND
IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES,2010
AND



**IN THE MATTER OF SECTIONS 7(2),14,43 AND 48 OF
THE LAND REGISTRATION ACT,ACT NO.3 OF 2012**

BETWEEN

FURNCORN LTD 1ST APPLICANT

**SOLOMON NJOROGE KIORE IN HIS CAPACITY AS A DONE OF POWER OF
ATTORNEY NO. IP/A/64940/1 2ND APPLICANT**

AND

**THE CABINET SECRETARY, (IS SUED IN HIS CAPACITY AS THE
CABINET SECRETARY) MINISTRY OF LANDS, HOUSING & URBAN
DEVELOPMENT) 1ST RESPONDENT**

CHIEF LAND REGISTRAR 2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 3RD RESPONDENT

AND

JONATHAN MUNYWOKI MULI INTERESTED PARTY

SHADRACK MBAI MBIU INTERESTED PARTY

**AS THE PURPORTED ADMINISTRATRICES OF THE ESTATE OF SHEILA
THOMPSON - DECEASED**

JUDGMENT

1. The first ex-parte/ applicant is a Limited Liability Company incorporated under the provisions of the *Companies Act*. The second ex-parte /Applicant is a male adult who is a director of the first ex-parte / Applicant. Pursuant to leave granted on 31st May 2017 , the ex-parte applicants filed a Notice of Motion dated 13th June 2017 in which they sought the following reliefs:-
 1. That by way of judicial review, an order of certiorari to issue, to remove to this Honourable Court for purposes of being quashed , and to quash, the 1st Respondent's Gazette Notice No.8684 of 20/11/2015 revoking Power of Attorney and Covenants beyond Death No. IP/ A 64940/1 as exposted by the cabinet Secretary on 25th November 2016, for being ultra vires and unconstitutional.
 2. That by way of Judicial Review, an order of mandamus do issue, upon the issuance of the Order of Certiorari herein, compelling the 2nd Respondent or any Registrar acting at their behest to reinstate the registration of the Power of Attorney and covenants beyond death No IP/A 64940/1.
 3. That the costs be to the ex-parte applicants in any event.
2. Though the three respondents were duly served, they neither entered appearance nor filed any grounds of opposition or replying affidavit to the motion by the ex-parte applicants. It is only the Estate of Sheila Thompson through the administrators which was named as interested party who filed a replying affidavit. The parties were directed to file written submissions on 29th November 2018 when the date



for judgement was given. As at 14th May 2018 when the date for judgement was given, no party had filed submissions and as at the time of writing this judgement, no submissions had been filed and if any were filed, they are not in the file.

3. The ex-parte applicants through the second ex-parte applicant contend that the revocation / deregistration of the power of attorney through gazette Notice No.8684 of 20th November 2015 was done without affording them an opportunity to be heard and that the reasons for that decision were communicated by the cabinet secretary , Ministry of Lands on 25th November 2016. The ex-parte applicants also contend that the first respondent exceeded his powers by proceeding to deregister the Power of Attorney when there was no power to do so.
4. The interested party through the administrators of the estate of Sheila Thompson opposed the ex-parte applicant's application through a replying affidavit sworn on 23rd November 2017. The respondents contend that the ex-parte applicants' application is an abuse of the process of the court. The interested parties state that the ex-parte applicants obtained letters of administration in respect of the estate of Anthony John Thompson through fraud by opening parallel files to cause confusion and disinherit the other beneficiaries. The interested parties further contend that the present proceedings cannot be allowed to proceed as there are other active proceedings pending in succession causes which are pending.
5. I have carefully gone through the ex-parte applicants' application as well as the opposition to the same by the interested parties' representing the estate of the late Sheila Thompson. These proceedings relate to a property known as LR No.1012/47/2 (IR 97708/1) located at Roysambu area in Nairobi county (suit property) . The suit property was registered in the names of the parents of Anthony John Thompson and Sheila Thompson. Upon the demise of the parents of the two, the property was registered in the joint names of Anthony John Thompson and Sheila Thompson as tenants in common.
6. Sheila Thompson died on 23rd June 2006 and the interested parties were appointed as administrators of her estate on 25th May 2012. Anthony John Thompson died in France probably between 23rd June 2009 and 6th July 2009. The administration of his estate has not been sorted out as there are pending succession proceedings in which at least three persons are claiming to be entitled to succeed his estate. One of the persons claiming to be entitled to administer his estate was granted leave to appeal against the decision of Justice Kimaru delivered on 21st November 2014, nullifying an alleged will made by Anthony John Thompson. The second ex-parte applicant was also seeking to administer the estate of Anthony John Thompson. Anthony John Thompson's only child had been given letters to administer the estate of her later father by a French court.
7. What prompted the current proceedings is a special power of attorney granted to the second ex-parte applicant by the wife and daughter of the late Anthony John Thompson in which they renounced their right to succeed the estate of Anthony John Thompson in Succession Cause 1965 of 2009 and gave power to the second ex-parte applicant over the suit property. The suit property is about 5 acres. It is this power of attorney which had been registered as IP/A 64940/1 which was deregistered vide gazette Notice No. 8684 of 20th November 2015 as amended vide Corrigenda published under gazette Notice No.8901 of 4th December 2015.
8. By Gazette Notice No.8646 of 20th November 2015, the donee of the Power of Attorney was given 14 days of the Registrar of titles intention to recall the said Power of Attorney failing which, the Power of Attorney was to remain revoked . A record of correspondence in this matter shows that the second ex-parte applicant was asked to forward the original of the Power of Attorney but he did not do so. By a letter dated 29th December 2016, the first respondent communicated the reasons behind the revocation



of the power of attorney. Prior to this communication there are other correspondence which show that the ex-parte applicants were informed about what had happened. The ex-parte applicants had made numerous complaints to various state and independent agencies like the Ethics and Anti-Corruption Commission, The Independent Police Oversight Authority, The Director of Public Prosecutions. The Commission of Administrative Justice among others.

9. The ex-parte applicant made this application on 24th may 2017. This was almost two years after the coming into force of the [Fair Administrative Action Act](#) 2015 which came into effect on 17th June 2015. Section 9 (2) of the Fair Administrative Actions Act 2015 provides as follows:-

“The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted”.

10. The main contention in this matter is on who is entitled to take out, letters of administration in respect of the Estate of the late Anthony John Thompson. If this is sorted out, the rest will follow. There are two succession causes which are pending in the Family Division of the High Court. The first one is Nairobi HC Succession cause No.1965 of 2009 filed by the second ex-parte applicant. The second is Nairobi HC Succession cause No.1788 of 2009 filed by Beatrice Wairimu Kariuki . These two cases were consolidated and a ruling delivered on 21st November 2014. The Petitioner in 1788 of 2009 has since obtained leave to appeal against the said ruling.
11. It is after the ruling of 21st November 2014 that the second ex-parte applicant obtained the special power of attorney which is the subject of these proceedings. It is important that the pending succession causes be exhausted before the ex-parte applicants can look for other remedies. It is for this reason that I decline to review the decision of the first respondent to deregister the special power of attorney. If the process of succession is exhausted, it will address the issue as to whether Anthony John Thompson was entitled to half of the suit property or the whole of the suit property. This will of course depend on whether the registration was a joint tenancy or tenancy in common. I do not have the benefit to conclusively state the nature of the tenancy as I do not have a copy of title. The copy may only have been in the succession file which I do not have as they are in a different court registry.
12. Even if it turns out that I am wrong in finding that the ex-parte applicants should have exhausted other remedies, the documents herein show that the ex-parte applicants were given notice of recall of the power of attorney. They were warned of the consequences of failure to comply. The result of failure to comply was that the power of attorney was to stand deregistered. Since there was no compliance, the power of attorney stood deregistered.
13. The court in an application for judicial review is concerned with the process leading to the act complained of. It is not concerned with the merits of the decision made. The ex-parte applicants seem to be making many allegations against the interested party and the first and second respondents. Allegation range from corruption to collusion and deliberate manipulation of the entire process. To me the process leading to the de-registration of the power of attorney was fair. The ex-parte applicants were given additional reasons for the decision taken. Prior to this, the parties seem to have been in constant communication over the matter. I therefore do not find any merit in the ex-parte applicants' application which is hereby dismissed with costs to the interested parties.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 20TH DAY OF SEPTEMBER 2018.

E.OBAGA



JUDGE

In the presence of :

Ms Kwamboka for Mr Nzaku for interested party

Ex-parte applicant Mr Solomon Njoroge Kiore

Hilda : Court Assistant

