



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

MISCELLANEOUS APPLICATION NO. 57 OF 2015

**IN THE MATTER OF AN APPLICATION BY JACOB ERNEST AMBALA ODONDI & ELIZABETH NAKAKI BULUMA FOR
LEAVE TO APPLY FOR AN ORDER OF PROHIBITION, MANDAMUS AND CERTIORARI**

AND

IN THE MATTER OF SECTIONS 18-23 OF THE LAND REGISTRATION ACT (NO. 3 OF 2012 OF THE LAWS OF KENYA)

AND

IN THE MATTER OF KISUMU/KOGONY/1136

BETWEEN

REPUBLIC.....EX-PARTE APPLICANT

AND

THE DISTRICT LAND REGISTRAR KISUMU.....1ST RESPONDENT

THE DISTRICT SURVEYOR KISUMU.....2NDRESPONDENT

AND

KENNETH OBONGO OBALLA.....1ST INTERESTED PARTY

MICHAEL ORONGO OKORE.....2ND INTERESTED PARTY

OPINYA OOGA.....3RD INTERESTED PARTY

JOEL ELIJAH DOLFUS NYASEME.....4TH INTERESTED PARTY

JOHN OMONDI.....5TH INTERESTED PARTY

PHOEBE ADHIAMBO OGUTU.....6TH INTERESTED PARTY

OPONDO OKUMU.....7TH INTERESTED PARTY

PEREZ OTIENO OPONDO.....8TH INTERESTED PARTY

JUDGMENT

1. Jacob Ernest Ambala Odondi and Elizabeth Nakaki Buluma, the Exparte Applicants, commenced this proceeding through the chamber summons dated 2nd March 2015 and filed on the 4th March 2015. The chamber summons was heard exparte on the 5th March 2015 and granted in terms of prayers (a) and (b), which effectively granted the Exparte Applicants leave to apply for the orders of Prohibition, Mandamus and certiorari. The exparte order also allowed the leave granted to operate as stay of the order of the District Land Registrar, Kisumu and the District Surveyor, Kisumu from altering and or re-surviving the boundary of Kisumu/Kogony/1136. That together with the court granting the leave to apply for the said judicial review orders, it directed that *“the substantive application to be filed within the next*

21 days.”

2. That the Exparte Applicants then filed the notice of motion dated 19th March 2015 on the 8th April 2015 under receipt number 6456335 of 8th April 2015.

3. The Attorney General filed their memorandum of appearance dated the 19th October 2017 in respect of the District Land Registrar and Surveyor Kisumu, the Respondents.

4. The notice of motion came up for hearing on the 17th September 2018 when counsel for the Exparte Applicants informed the court that the Interested parties have never entered appearance and no replying papers in opposition to their application had been filed and served. The learned counsel for the Exparte Applicants prayed that their notice of motion be allowed as prayed.

5. The following are the issues for the court’s determinations;

a) Whether the Exparte Applicants have established that the orders sought to be quashed were issued in excess of the said public officer’s powers.

b) Whether the Exparte Applicants were accorded a hearing before the orders complained of were issued.

c) Whether the orders sought to be quashed were issued in breach of the provisions of the law.

d) Who pays the costs of these proceedings.

6. The court has after carefully considering the grounds of the notice of motion, statement of facts, verifying affidavit and the record come to the following conclusions;

a) That the copy of the title deed for Kisumu/Kogony/1136 issued on the 20th January 2012 shows that the Exparte Applicants became the registered proprietors of the suit land on the same date, 20th January 2012. That certificate of official search issued on the 9th September 2014 of the said land however shows that the Exparte Applicants got registered as proprietors on the 8th December 2012 and the title deed was issued on the same date. That there is no explanation tendered to reconcile or explain the difference in the date of registration on the two documents.

b) That there is no evidence tendered by the Exparte Applicants to show that the said land has been subdivided or is about to be subdivided by the Interested Parties and the Respondents without their authority as the registered proprietors.

c) That District Land Registrar’s and Surveyor’s Kisumu order that is sought to be quashed has not been attached to the statement of facts and or verifying affidavit contrary to the provision of Order 53 Rules 7 (1) of Civil Procedure Rules. The sub-rule provides as follows;

“7 (1) In the case of an application for an order of Certiorari to remove any proceedings for the purpose of their being quashed, the applicant shall not question the validity of any order, warrant, commitment, conviction, inquisition or record, unless before the hearing of the motion he has lodged a copy thereof verified by affidavit with the registrar, or accounts for his failure to do so to the satisfaction of the High Court.”

d) That the summons dated 21st August 2014 by the Land Registrar that is annexed to the 1st Exparte Applicant’s supporting affidavit shows clearly that the inquiry was concerning land parcel Kisumu/Kogony/1912. That the Exparte Applicants have not shown how the inquiry or proceedings on Kisumu/Kogony/1912 would affect or prejudice their proprietary interests over Kisumu/Kogony/1136.

e) That though the order of 5th March 2015 required the substantive application, which obviously meant the notice of motion, to be filed in 21 (twenty one) days, it was not until 8th April 2015 that the application herein was filed. That this clearly shows that the notice of motion was filed after about 34 (thirty four) days from the date of the leave. That the application was therefore filed outside the 21 days given and without extension of time being obtained, and should be struck out.

f) That the Exparte Applicant have failed to establish a case for prohibiting the Respondents from performing their official and statutory duties in accordance with their office. That in case the Exparte Applicants desire to have the boundaries of their land re-established and or confirmed, they are at liberty to move the Land Registrar and Surveyor for appropriate action.

7. That for reasons set out above, even though the Respondents and Interested Parties did not defend these proceedings, the court finds no merit in the notice of motion dated 19th March 2015 and filed on the 8th April 2015. That the said application is herewith dismissed with no orders as to costs.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 14TH DAY OF NOVEMBER 2018

In the presence of:

Ex-parte Applicants Absent

Respondents Absent

Interested Parties Absent

Counsel Mr. Ouma for Ogejo for Exparte Applicants

M/s Aliongo for Respondent

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE