



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT

AT NAIROBI

ELC CASE NO. 306 OF 2016

CLAUDELYONS (EA) CO.LTDAPPLICANT

=VERSUS=

THE CHIEF LAND REGISTRAR1ST RESPONDENT

THE HON.ATTORNEY GENERAL.....2ND RESPONDENT

RULING

1. This is a Ruling in respect of an ex-parte Chamber Summons dated **20th November 2015**, in which the applicant seeks leave of the Court to apply for judicial review orders of *certiorari*, *mandamus*, and *prohibition*. The application is based on the statement of facts dated **20th November 2015**, which is supported by an affidavit of **David Kinyua Mugo** verifying the statement of facts.
2. The applicant contends that it is the registered owner of **LR No.12442** registered under Grant Number **I.R 33904**. That in **June 2015**, during a routine inspection of the register, it found out that the Land Registrar had cancelled entries numbers **7,8** and **10** in the register. The applicant then wrote a letter dated **6th August 2015**, to the Land Registrar protesting the cancellation. A reminder was written but there was no response from the Land Registrar.
3. *Entry number 10* in the Register related to transfer of the land in issue to the applicant. The applicant therefore contends that the cancellation of its registration as proprietor of the land without notification to it was contrary to the laws of natural justice.
4. The applicant’s application was opposed by the Respondents and the interested parties. The Respondents and the interested parties contend that the applicant’s application has been brought outside the statutory period. That the applicant is guilty of non-disclosure of material facts. That the subject matter of the suit has been the subject of litigation where the applicant is a party and that it will be better if the issue of ownership of the suit in issue is determined in the pending civil cases one of which the applicant is a named party.
5. I have gone through the applicant’s application, the affidavits in reply to the application as well as the submissions by the parties concerned. There are a number of decisions which have been rendered regarding the issue of grant of leave to file an application for financial review. There are also statutory provisions and law materials on the subject.
6. In deciding whether to grant leave or not, I must state the facts relating to this application as they have

emerged from materials before me.LR No 12442 Registered under Grant Number I.R 33904 (suit property) was registered in the names of **Yogendra Purshottam Patel, Rajnikart Patel and Prahladbhai Patel** (All deceased) as tenants in common. After the three who were brothers died, succession was carried out. There arose a dispute amongst the siblings of the three. This led to filing of **Nairobi HCCC No. 617 of 1995**. The dispute later went to the Court of Appeal.

7. As the siblings of the original owners were wrangling in Court, it was discovered that the suit property had been illegally transferred to a company called Naiburome East Africa Limited and finally to the applicant. It is after this discovery that the administrators of the deceased original owners filed Milimani **ELC 385 of 2012**, against six defendants one of whom is the applicant. This case is still pending.

8. In the meantime a complaint was made to the criminal investigations Department (CID) who investigated the illegal transfer and found out that one **Regina Nyokabi Kuria** a director of the applicant was involved in the illegal transfer. **Regina Nyokabi Kuria** was charged in Nairobi Chief Magistrate Court Criminal case **No.1603 of 2012**.

9. It is on the basis of the investigations that the Land Registrar cancelled the three entries and accordingly notified the advocates of the applicant. The decision on whether to grant leave or the main remedy itself is a matter of discretion and that discretion has to be exercised based on certain established principles.

10. In exercising this discretion, Halsbury's Laws of England 4th Edition Vol. 1(1)Paragraph **12 Page 270** has given useful guidelines as follows;-

“In deciding whether to grant relief, the Court will take into account the conduct of the party applying, and consider whether it has not been such as to disentitle him of relief. Undue delay, unreasonable or unmeritorious conduct, acquiescence in the irregularity complained of or waiver to the right to object may also result in the court declining to grant relief. Another consideration in deciding whether or not to grant relief is the effect of doing so. Other factors which may be relevant include whether the grant of the remedy is unnecessary or futile, whether practical problems, including administrative chaos and public inconvenience and the effect on third parties who deal with the body in question, would result from the order and whether the form of the order would require close supervision by the court or be incapable of practical fulfilment.....”

11. To begin with, the act complained of occurred in the year 2012. Though the applicant is pretending to have known about the act in 2015, the truth of the matter is that it knew of the Land Registrar's action in 2012. The applicant brought this fact to the attention of their lawyers **Messers Njeru Nyaga & Co. Advocates** who in their letter of **23rd November 2012**, wrote to the Principal Registrar of Documents protesting the cancellation of the entries and urging restoration of the entries in the register. It is therefore clear that the applicant is not being honest when it claims that it first discovered the act complained of in June 2015.

12. Under **Section 9 (3)** of the **Law Reform Act Cap 26** Laws of Kenya and **Order 53 Rule 2** of the **Civil Procedure Rules** which have similar provisions, it is clear that;-

“ Leave shall not be granted for an order of certiorari to remove any judgement ,order ,decree, conviction or other proceedings for purposes of being quashed unless the application for leave is made not later than six months after the date of the proceedings or such shorter period as may be prescribed by an Act”.

The applicant herein was aware of the Land Registrar's decision in the year 2012. The applicant did not file any application for leave to apply for certiorari within six months. The provisions of Section 9 (3) of Law **Reform Act Cap 26** Laws of Kenya and **Order 53 Rule 2** of the **Civil Procedure Rules** are **Mandatory Provisions**.

13. The applicant was aware of the existence of Milimani ELC Case **No.385** of **2012**, where it is the second defendant. **Daniel Kinyua Mugo** who is a director of the applicant knew about this case filed in 2012, but he did not want to disclose. He also knew that his co-director **Regina Nyokabi Kuria** was facing a criminal case in respect of the suit property but did not want to disclose. **Regina Nyokabi Kuria** herself had filed a Constitutional Petition in relation to the Criminal Prosecution she was facing but this petition was dismissed .

14. In an application for leave to file an application for judicial review, the applicant is expected to demonstrate that he has an arguable case which should be allowed to proceed to the next stage of filing the main application. Based on the materials placed before me I do not think that the applicant has shown that it has an arguable case for grant of leave.

15. There is already a case pending hearing and determination on the issue of ownership of the suit property. It has been held that where an applicant has an alternative remedy where he can ventilate the issues, leave should not be granted. At the end of the day, the issue of ownership of title would have to be decided and this cannot be done in a judicial review application. It can be best addressed in another forum such as the existing case where the applicant is a party.

16. The applicant is guilty of non-disclosure. The incidences of non-disclosure have been given herein above. This coupled with the fact that the applicant appears to have acquiesced the act complained of and further that it did not act since the year 2012 when it became aware of the action complained of disentitles it the grant of leave.

17. As was correctly observed by Justice Waki as he then was in the case of **Republic Vs County Council of Kwale & another ex parte Kondo & 57 others (1998) 1 KLR (E&L)**, the purpose of an application for leave to apply for judicial review is among others to eliminate at an early stage application for judicial review which is either *frivolous, vexatious* or hopeless and to ensure that a party is allowed to file the substantive application when he has a case fit for consideration.

18. For the reasons given hereinabove, I find that this is not a proper case for grant of leave to bring a substantive application for judicial review. The upshot of this is that the applicant's chamber summons dated *20th November 2015*, is dismissed with costs to the Respondents and interested parties.

It is so ordered.

Dated, Signed and Delivered this at **Nairobi** this **23rd** day of **February, 2017**

E.O .OBAGA

JUDGE

In the presence of :-

Mr Mbaka for Senteu for the Ex-parte/Applicant

M/s Kerubo for M/s Ndundu for 1st and 2nd Respondents

Mr Ondieki for Mr Kiragu Kimani for interested parties

Court Assistant : Hilda

E.O .OBAGA

JUDGE