



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT NYERI

JUDICIAL REVIEW NO. 15 OF 2016

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

AND

**IN MATTER OF THE CONSTITUTION, THE MINING ACT AND FAIR ADMINISTRATIVE
ACT 2015**

AND

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

BETWEEN

THE REPUBLIC APPLICANT

-VERSUS-

COUNTY GOVERNMENT OF SAMBURU RESPONDENT

AND

COMMISSIONER OF MINES & GEOLOGY INTERESTED PARTY

AND

GICHOYA MINES LTD EXPARTE APPLICANT

RULING

1. On 6th July, 2016 the *ex parte* applicant, Gichoya Mines Limited, filed an application by way of chamber summons dated 5th July 2016 in Nanyuki High court seeking leave to, *inter alia*, apply for judicial review orders of *Certiorari* and *prohibition* against the respondent.

2. The application is premised on the grounds that the decision was reached without any regard to the *ex parte* applicant’s right to be heard, offending its rights to fair administrative action, its legitimate expectation and equal treatment before the law and being an offence to the constitution. It is the

applicant's contention that the said decision is unprocedural, null and void.

3. In the affidavit sworn on 5th July, 2016 by Njuguna Mwangi Gichoya, a director of the *exparte* applicant, it is pointed out that consent was sought from the respondent by the inspector of mines on behalf of the *exparte* applicant vide a letter dated 3rd July, 2014 to allow the *exparte* applicant prospect and mine within its area of jurisdiction. The consent was granted by the respondent on 19th January, 2015 allowing the *exparte* applicant to mine within Nachora ward in Samburu North. On the strength of that consent, the applicant obtained a single business permit from the respondent after paying Kshs.25,000/- and Kshs. 52,907/- for a special licence to mine various minerals. The licence was gazetted on 12th June, 2015 but on 19th January, 2016 the respondent issued a letter revoking the consent.

4. Aggrieved, the *exparte* applicant wrote to the respondent on 25th January 2016 protesting the unilateral revocation of its prospecting licence, which letter the respondent never responded to. This prompted the filing of this suit on 6th July, 2016 in the High court, Nanyuki.

5. When the matter went before Kasango J, the respondent raised an objection on the grounds that the High Court had no jurisdiction to hear the matter.

6. In her Ruling delivered on 24th November, 2016 Kasango J, allowed the objection and transferred the matter to Nyeri Environment and Land Court for hearing and determination.

7. The chamber summons was argued before me on 28th February, 2017. Counsel for the *ex parte* applicant Ms Ndegwa, reiterated the grounds on which the application is premised and urged the court to grant the prayers sought.

8. Counsel for the respondent Mr. Kamunya, who had not filed any response objecting to the summons left the matter to court.

9. Having considered the application before the court, the grounds in support, the statements of facts and the verifying affidavit, the court finds the sole issue for determination to be whether leave should be granted to the applicant to apply for judicial review orders.

10. Before granting leave to institute judicial review orders the applicant must make out a prima facie case. From the evidence on record, the applicant has demonstrated how it's license was cancelled by revoking the consent. It is the applicant's contention that the process of revocation was done without according the applicant the opportunity to be heard. I am satisfied that the applicant has established a *prima facie* case and I grant the applicant leave of 21 days to institute judicial review proceedings.

Dated, Signed and Delivered in open court at Nyeri on this 31st day of May, 2017.

L. N. WAITHAKA

JUDGE

Coram:

Mr. Kebuka Wachira h/b for Gakuhi Chege for *exparte* applicant

N/A for the Respondent

N/A for interested party

Court assistant - Esther