



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO. 9 OF 2015

REPUBLIC.....APPLICANT

VERSUS

DIRECTOR OF SURVEYS.....1ST RESPONDENT

COUNTY SURVEYORS2ND RESPONDENT

DISTRICT LAND REGISTRAR.....3RD RESPONDENT

DAVID N CHEGE

WILSON NGANGA

ANTHONY KANYARI.....INTERESTED PARTIES

EX-PARTE NDEFFO COMPANY LIMITED

RULING

(Application for review; applicant having given the wrong parcel number in his pleadings; ruling made based on what the applicant had provided; applicant discovering the error during execution and now seeking review; best that the whole ruling be set aside and the applicant to amend the pleadings to correct the error; the error in the parcel numbers is not one for review but for relitigation after correction)

1. The application before me is that dated 5 December 2016 filed by the ex-parte applicant. The ex-parte applicant wishes to have reviewed the orders of this court that were issued on 21 September 2016 which were actually the final orders issued after the hearing of the substantive judicial review motion. In this application, the ex-parte applicant wishes to have the judgment reviewed on the averment that there is an error apparent on the face of record owing to genuine mistake which needs to be corrected.

2. The substantive judicial review motion, the ex-parte applicant had sought for orders of mandamus to compel the Director of Surveys, the Nakuru County Surveyor and the Nakuru District Land Registrar, "to visit the parcels of land identified as L.R No. 445/1 (also known as L.R No. 9970) and establish the original beacons between the said parcel of land and the parcels of land known as L.R No. 445/3 and L.R No. 5286."

3. In the motion, the ex-parte applicant stated that it is the owner of the land parcel L.R No. 445/1 (also known as L.R No. 9970); that a boundary dispute had emerged; that the applicant reported the same to the respondents but they failed to visit the site to identify the original beacons.

4. I heard the motion and allowed it through my ruling of 21 September 2016. I directed the 1st and 3rd respondents "to proceed and affix the beacons or boundary marks to the land parcel L.R No. 445/1 (also known as L.R No. 9970) within 30 days."

5. In this application, the ex-parte applicant has averred that there is an error apparent on the face of record. The supporting affidavit is sworn by Charles Rong'o Mbugua. He has deposed that after extracting the order, they served it upon the surveyor and visited the ground. They found that the order only related to the boundaries of the land parcel L.R No. 445/1 also described as L.R No. 9970. He has averred that in the substantive motion, they had sought orders of mandamus to compel the respondents to visit the parcels of land known as L.R No. 445/1 (also known as L.R No. 9970) and establish the original beacons between the said parcel of land and parcels of land known as L.R No. 445/3 and L.R No. 5286. He has stated that in the ruling of the court, the parcels of land L.R No. 445/3 and 5286 were omitted. He is thus of the view that there is an error apparent on the face of the record. He has also stated that he has discovered that the land L.R No. 445/1 was mistakenly referred to as L.R No. 9970 yet it is the parcel No. 445/3 which is actually known as L.R No. 9970. He wants the order of mandamus reviewed to compel the District Land Registrar and Surveyor to proceed "to the land parcel No. 445/1 and LR No. 445/3 (also known as LR No. 9970) and LR No. 5286...."

6. I have considered the application. In the substantive motion, the ex-parte applicant had stated that it is the registered owner of the land parcel L.R No. 445/1 also known as LR No. 9970. In this application, the ex-parte applicant states that it is actually the land parcel LR No. 445/3 which is LR No. 9970 and not the parcel LR No. 445/1. In the substantive motion, the ex-parte applicant had stated that it owns the land parcel LR No. 445/1 having purchased it in the year 1973. I therefore proceeded to hear the motion and make a determination based on what the ex-parte applicant had presented. I do not see how it can be said to be an error apparent on the face of the record by the ex-parte applicant, after a final ruling has been made, to now state that it gave the wrong parcel of land for consideration. I do not think that this is an error that warrants a review, but it is a fundamental issue that now calls for the setting aside of the whole judgment, so that the ex-parte applicant can proceed to amend its pleadings and for the court to make a finding based on the correct pleadings. If a party litigates on say land parcel A, then after judgment, he discovers that the correct land parcel is parcel B, I think the issue is not a simple one for review, to change A to B, but as I am saying, the pleadings need to be amended to reflect that the claim is actually on land parcel B, and not A, so that the party's entitlement to the land parcel B is determined with all other affected parties being present. That is my view of the matter so that a fundamental determination is not made based on land that has not been subjected to litigation.

7. On the point that the court did not make a ruling on the parcels of land LR No. 445/3 and LR No. 5286, that was deliberate, as I was of the considered view that the problem of the ex-parte applicant will be resolved once it is shown its boundaries to what it had mentioned was its land parcel LR No. 445/1 also known as LR No. 9970. To me, it mattered not, whether or not the other boundaries are affixed, so long as the boundaries to what the ex-parte applicant owned was clear.

8. Based on the ex-parte applicant's own admission that it litigated over the wrong parcel of land, I set aside the ruling of 21 September 2016. I direct the ex-parte applicant to proceed and amend its pleadings so that the same can reflect what the ex-parte applicant considers to be the correct parcel/s of land that ought to be the subject of this litigation.

9. I make no orders as to costs.

10. It is so directed.

Dated, signed and delivered in open court at Nakuru this 31st day of May 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT AKURU

In the presence of :