



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT**

**AT KITALE**

**MISC.CIVIL APPLICATION NO.2 OF 2016**

**IN THE MATTER OF AN APPLICATION BY PETER K WILSON FOR ORDERS OF JUDICIAL REVIEW IN THE NATURE OF CERTIORARI AND PROHIBITION**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE LAW REFORM ACT,CHAPTER 26 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT 2015**

**AND**

**IN THE MATTER OF THE LAND ACT NO.6 OF 2012**

**AND**

**IN THE MATTER OF THE LAND REGISTRATION ACT NO.3 OF 2012**

**AND**

**IN THE MATTER OF THE SURVEY ACT CHAPTER 299 OF THE LAWS OF KENYA**

**BETWEEN**

**REPUBLIC .....APPLICANT**

**AND**

**THE DIRECTORS OF SURVEY.....1<sup>ST</sup> RESPONDENT**

**THE CABINET SECRETARY MINISTRY OF LANDS**

**HOUSING AND URBAN DEVELOPMENT.....2<sup>ND</sup> RESPONDENTS**

THE HON.THE ATTORNEY GENERAL .....3<sup>RD</sup> RESPONDENT

AND

JOHN SAKAJA.....INTERESTED PARTY

PETER K WILSON.....EX-PARTE APPLICANT

**RULING**

1. The ex-parte applicant Peter K. Wilson filed a Notice of Motion dated 10<sup>th</sup> May 2016, seeking orders of ***Certiorari*** and ***Prohibition***. The ex-parte applicant seeks an ***order of certiorari*** to move into this Court and quash the decision of the Director of survey embodied in a letter dated 6<sup>th</sup> April 2016, written by the County Surveyor Trans-Nzoia to excise a 40 feet wide road of access from ***LR Nos.2073/36*** and ***2073/37***. The ex-parte applicant also seeks orders of prohibition against the first and second Respondents from excising a 40 feet wide road from ***LR No. 2073/36*** and ***2073/37***.

2. The ex-parte applicant contends that the first Respondent's decision to excise a 40 feet access road from parcel ***Nos.2073/36*** and ***2073/37*** was unilateral and amounts to abuse of office and is contrary to the provisions of the Fair Administrative Action Act. That if the excision of the 40 feet road is allowed to go on, it will reduce his land yet he was never heard contrary to the rules of natural justice. That there were no reasons given whether oral or written for the decision by the 1<sup>st</sup> Respondent.

3. The ex-parte applicant's application is opposed by the interested party and the Respondents through a replying affidavit sworn on 18<sup>th</sup> July 2016 by the interested party, 15<sup>th</sup> August 2016 by the county surveyor Trans-Nzoia County on behalf of the Respondents and a further affidavit sworn on 12<sup>th</sup> October 2016 by the interested party.

4. The interested party and the Respondents contend that the ex-parte applicant's application lacks merit, is full of falsehoods and that the ex-parte applicant has not disclosed material facts relating to the issue at hand and that he is only out to mislead the court. That the access road which is in contention has existed in the maps which date back to 1952. That there was provision for the 40 feet wide road which was being used since 1952 and that the same was reduced in size by the ex-parte applicant upon subdivision of the land which was held by the ex-parte applicant father.

5. I have carefully gone through the ex-parte applicant's application and the opposition thereto by the interested party and the Respondents. I have also gone through the submissions by the ex-parte applicant and the Respondents. This being an application for judicial review, the court is only concerned with the process leading to the decision being complained of. The court is concerned to ascertain whether the ex-parte applicant was given a fair hearing before the decision being complained of was arrived at. The court is not concerned with the merits of the decision.

6. In the instant case, the issue for determination is whether there was a fair hearing before the decision embodied in the letter of 6<sup>th</sup> April 2016 was arrived at. The ex-parte applicant contends that he was not heard before the decision was arrived at. That these parcels of land were not among those affected by the deliberations which culminated in the decisions being complained of.

7. When the ex-parte applicant came for leave to file an application for judicial review, he made it appear that the decision being complained of was a unilateral decision. That he was never given opportunity to be heard. However when he filed the application for judicial review and the interested party and the Respondents responded to his application, it has turned out that what led to the decision embodied in the letter of 6<sup>th</sup> April 2016, is something which has been going on for some time. The issue of the access road has been a subject of discussions involving even the ex-parte applicant. Survey maps were considered and it was found that there existed a 40 feet wide road which was to be excised from LR Nos.2073/36 and 2073/37. These two parcels were subdivisions of a larger portion which was known as LR 2073/13 which

belonged to the ex-parte applicant's father who is now deceased. The ex-parte applicant is the administrator of the estate of his late father.

8. The ex-parte applicant has conceded in his further affidavit sworn on 13<sup>th</sup> September 2016, that indeed there was a meeting held on 19<sup>th</sup> March 2016, convened by the county surveyor Trans-Nzoia. The ex-parte applicant was present during that meeting. The minutes of that meeting were reduced into writing and the ex-parte applicant confirms the same minutes. The ex-parte applicant seems to complaining about the verdict arrived at during that meeting. He complains that certain complaints which were raised by those present including himself are not captured in the minutes. He even questions how a proposed road can become public land.

9. The meeting of 1<sup>st</sup> March 2016, was convened by the Land Registrar and a surveyor from Trans-Nzoia County. The ex-parte applicant was present. A decision was arrived at to the effect that there existed a 40 feet wide road of access. When this report reached the Director of survey, the Director of survey directed the County surveyor to implement the decision. This is the decision which is embodied in the letter dated 6<sup>th</sup> April 2016. The ex-parte applicant cannot in the circumstances say that he was not given a chance to be heard.

10. The ex-parte applicants raised his concerns. He agrees in principle that there was a proposed road measuring 40 feet wide. What he seems to complain about is how a proposed road can become a public road. I do not think that this is an issue which can be addressed through judicial review. The ex-parte applicant is complaining about the merits of the decisions arrived at. This is not the concern of the court when dealing with an application for judicial review. It is clear that the ex-parte applicant was given a hearing before the decision to excise the 40 feet wide road was made. Even if that road was just a proposed road, the fact remains that provision was made for it. Whether it was not created in 1952 or if it the one which is in contention and is being used, the fact remains that provision of that road was taken care of and the decision to excise it is in order and cannot be faulted.

11. The Respondents' contention and that of the interested party is that the road has been in existence and that it was only reduced upon the subdivision of the ex-parte applicant's father's land. It is clear that the ex-parte applicant is trying to cause confusion by alleging that the road was just a proposed road and that its creation ought to be done with consultations. Consultations have already been undertaken and the ex-parte applicant was present during those meetings. I do not find any merit in the ex-parte applicant's application which is hereby dismissed with costs to the Respondents and the interested party.

It is so ordered.

Signed at Nairobi.

**E.OBAGA**

**JUDGE**

**Dated and Delivered at Kitale on this 29<sup>th</sup> day of May, 2017**

In the presence of Mr. Kiarie for ex-parte applicant

Court assistant - Isabellah

**F M NJOROGE**

**JUDGE**