



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

MISC. CIVIL APPLICATION NO. 56 OF 2015

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

AND

IN THE MATTER OF AN APPLICATION OR JUDICIAL REVIEW FOR AN ORDER OF PROHIBITION

AND

IN THE MATTER OF LAND PARCEL CHEMBE/KIBABAMSHE/356

AND

IN THE MATTER OF THE LAND REGISTRATION ACT NO. 3 OF 2011

AND

IN THE MATTER OF THE SALIENT PRINCIPLES OF REASONABLENESS, LEGITIMATE EXPECTATION, ULTRA VIRES & FAIR ADMINISTRATIVE ACTION

BETWEEN

REPUBLIC.....APPLICANT

VERUS

THE LAND REGISTRAR, KILIFI COUNTY.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL2ND RESPONDENT

AND

AZZURI LIMITEDEX-PARTE APPLICANT

JUDGMENT

1. In the Notice of Motion dated 28th September, 2015, the Ex-parte Applicant is seeking for the following orders:

a. That an order of prohibition does issue directed against the 1st Respondent from in any

manner whatsoever allowing and/or registering any dealings, transactions, transfer or conveyance respecting all that landed property otherwise known as Chembe/Kibabamshe/356.

b. That costs be provided for.

2. According to the Ex-parte Applicant, it is the registered proprietor of parcel of land known as Chembe/Kibabamshe/356; that on 19th August, 2015, the Respondent declined to issue it with an official search; that the 1st Respondent is defending a known fraudster by the name of Lawrence Kadenge Ziro and that there are reasonable grounds to believe that the records at the Kilifi Land Registry have been fraudulently altered.
3. It is the Ex-parte Applicant's case that the court has the power to intervene not only to prevent powers being exceeded but also to prevent them from being abused.
4. In response, the Kilifi County Land Registrar deponed that the suit property has had multiple registrations which he inherited; that the first Green card was issued on 22nd December, 1986 which shows the current registered owner as Jordanvale (K) Limited; that the 2nd Green card was registered on 22nd December, 1986 and shows the rightful owner of the land as Lawrence Kadenge Ziro and that the third Green card was registered on 31st October, 2014 and shows the registered owner of the land to be the Ex-parte Applicant.
5. According to the Respondent, the Green Card issued to the Ex-parte Applicant is highly unprocedural because the SFT has never settled limited liability companies in the Settlement Scheme and that this suit has been filed with the intention of coercing the Land Registrar to issue to the Ex-parte Applicant a Certificate of Search confirming that the Applicant is the rightful owner of the land.
6. The Applicant filed a detailed Further Affidavit in which its director deponed on how it acquired the suit land and why the suit property belongs to it.
7. The Applicant's advocate submitted that unless the Respondent is prohibited by an order of prohibition the Respondent will proceed to alienate the suit property.
8. The Respondents did not file submissions.
9. The Ex-parte Applicant has moved this court by way of Judicial Review seeking for an order of prohibition restraining the 1st Respondent from allowing any dealings, transactions and transfer in respect to the suit land.
10. The 1st Respondent has stated in his reply that the suit property is registered in the names of different parties, including the Ex-parte Applicant.
11. Other than the Ex-parte Applicant, the 1st Respondent has indicated that the suit property is also registered in favour of one Lawrence Kadenge Ziro who is not a party to these proceedings.
12. Indeed, this court is aware of the existence of more than two suits in respect of the suit land involving the Ex-parte Applicant, the said Lawrence Kadenge Ziro and other third parties.
13. In view of the interests of other parties to the suit property and considering that we have pending civil suits, an order of prohibition is not the most appropriate order to issue, and more so without involving the other parties.
14. The Ex-parte Applicant should move the civil court in the pending matters and obtain an order of injunction to avoid a conflict between the Judicial Review orders which are being sought and the orders that may be issued in the pending suits.

15. In any event, the claim that the 1st Respondent may deal with the suit property in favour of third parties is speculative considering that it is only the court that will determine the rightful owner of the suit property.

16. For those reasons, I dismiss the Notice of Motion dated 28th September, 2015 with no order as to costs.

DATED AND SIGNED AT MACHAKOS THIS 2ND DAY OF MAY, 2017.

O.A. ANGOTE

JUDGE

DATED, DELIVERED AND SIGNED AT MALINDI THIS 12TH DAY OF MAY, 2017.

J.O. OLOLA

JUDGE