



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**JUDICIAL REVIEW NO.2 OF 2014**

**REPUBLIC .....APPLICANT**

**VERSUS**

**THE HOSPITAL MANAGEMENT COMMITTEE**

**BAHATI DISTRICT HOSPITAL .....1<sup>ST</sup> RESPONDENT**

**MINISTRY OF HEALTH .....2<sup>ND</sup> RESPONDENT**

***EX-PARTE***

**RUTH WANJA KIMANI**

**JUDGMENT**

***(Judicial Review motion for an order of certiorari to quash a notice issued by respondents; notice in issue asked the ex-parte applicant to vacate land which the respondents assert ownership to; ex-parte applicant also claiming the same land and arguing that the notice is illegal because she was entitled to be heard before its issuance; the notice was no more than a demand letter which cannot be regarded as an administrative action capable of being quashed by an order of certiorari; application dismissed)***

1. This is a judicial review motion seeking orders of certiorari, to bring to this court and have quashed, a notice dated 6 January 2014, issued by the respondent. That notice was issued to the ex-parte applicant by the respondent and I will repeat it verbatim. It is drawn as follows :-

*" 6 January 2014*

*To Mrs. Ruth Wanja Kimani*

*Mother to Minors registered on the land*

*P.O Box 3368-20100*

*Nakuru.*

***RE: 14 DAYS NOTICE TO VACATE ENCROACHED HOSPITAL LAND***

*Reference is made to District Land Registrar's letter ref No. RIM/GEN/44 of 6th November 2013 copy of which is attached for your perusal and the recommendation of the Hospital Management Committee members during their quarterly meeting held on 12th November 2013.*

*The Land Registrar Nakuru Lands Office confirmed that the parcel of land registered as No. Bahati/Bahati Block 1/1743 which you claim belong (sic) to your daughters (minors) does not appear on the Map/RIM in his office. This therefore means the title deed attached to the plot is questionable.*

*The Hospital Management Committee members recommend that you be given fourteen (14) days notice from the date of this letter to vacate the land to enable the completion of the master plan for future infrastructure development expansion at the hospital.*

*I kindly therefore urge you to treat this matter seriously and act promptly failure to which forceful legal action shall be taken against you without further reference.*

*Thank you.*

*Signed.*

*Kennedy Owino*

*Secretary, Hospital Management Committee*

*Bahati District Hospital. "*

2. The ex-parte applicant has averred that the above notice was issued unilaterally and without following the due process of the law. It is said that prior to the notice, the respondents did not involve her at all, yet her family and herself are affected by the decision. It is her position that she needed to be notified of the process and be given an opportunity to respond before such notice could issue. She has averred that the law is clear that a party should resort to due process of the law in filing a civil suit or a land matter so that all parties can participate in the judicial process. She has stated that her children are the registered owners of the land parcel Bahati/Bahati Block 1/234 pursuant to a title issued on 2 October 1998 and that the respondents have their title deed to the land parcel Bahati/Bahati Block 1/1710 issued to Bahati Rural Health Demonstration Centre on 15 May 2002. She has stated that she has invested on the land and has lived here with her children for over 20 years. She has contended that the respondents have no locus standi to issue the above notice.

3. The respondents have filed a replying affidavit sworn by Dr. Kennedy Owino, the Medical Superintendent of Bahati District Hospital. He confirms that the above notice was issued because the land parcel Bahati/Bahati Block 1/1734 which the ex-parte applicant claims to belong to her daughters, does not exist in the Map/RIM hence non-existent. He has deposed that the Hospital was in the process of preparing its master plan and while doing so they engaged the District Land Registrar and District Surveyor to confirm the boundaries of the hospital land which is land parcel Bahati/Bahati Block 1/1710. It was then found that the ex-parte applicant had encroached on part of the hospital land. He has stated that the continuous illegal occupation by the ex-parte applicant of the hospital land is hindering the implementation of the hospital master plan. He has asserted that they have locus to issue the 14 days notice.

4. Both parties filed their respective submissions which I have considered.

5. What is in issue is the notice which I have set out above. The ex-parte applicant believes that the respondents had no jurisdiction to issue the said notice and that the same should be quashed. It was inter alia submitted by Mr. Karanja Mbugua, learned counsel for the ex-parte applicant, that natural justice dictates that a person first be given an opportunity to be heard before any action can be taken against him/her.

6. In my view, the issues raised herein do not fall within the province of judicial review. What was issued to the ex-parte applicant, was a mere notice, asking her to vacate what the respondents believe is their land. That is not an administrative action that is subject to judicial review. The respondents believed that the ex-parte applicant was in their land and they were fully entitled to issue a notice to the ex-parte applicant to ask her to stop what they believed were acts of trespass committed by her. That cannot by any stretch of imagination be deemed an administrative action meted out against the ex-parte applicant. Neither was it necessary for the respondent to call the ex-parte applicant for a hearing before they could issue the said notice. What was issued is the sort of notice that any land owner can issue to a person who he/she believes is trespassing in their land.

7. On receipt of such notice, and if the ex-parte applicant believed that she was not in trespass, she could have filed a substantive suit for the court to determine whether or not she is in trespass. I do not see how the notice above can be said to be ultra vires. The respondents as owners of the land in question are the entity that had capacity to issue the said notice and they did issue it.

8. Counsel for the ex-parte applicant referred me to various decisions including that of *Kuria Greens vs Registrar of Titles & Another, High Court at Nairobi, Petition No. 107 of 2010*, but that case is clearly distinguishable to this matter. In that case, the title of the petitioner was revoked through the publication by the Registrar of Titles of a notice in the Kenya Gazette. It is not the same scenario in this case. The respondents have not purported to cancel any title held by the ex-parte applicant. What they have done is merely issue a notice to vacate what the respondents believe is their land. There is absolutely nothing wrong in that, and no law bars any person or entity from issuing a notice to vacate land that they claim to own. Indeed, there can be no such law. The notice is similar to a demand letter, which is normally issued as a precursor to court proceedings. One cannot fault another for issuing a demand notice and it is perfectly in order to issue such a notice.

9. In any event what is eventually at stake is ownership of two parcels of land said to be owned by the ex-parte applicant and the respondents. This court cannot in proceedings of this nature, make substantive determinations on who is the proper owner of what land. That can only be determined in a substantive suit.

10. From the above discourse, I find no merit in this judicial review motion. It is hereby dismissed with costs.

11. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 29<sup>th</sup> day of June 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of:**

Mr. Karanja Mbugua for the ex-parte applicant.

Mr. Kiprotich Kirui instructed by the State Law Office for the respondents.

Court Assistant: Nelima

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**