



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO.52 OF 2008

REPUBLIC.....APPLICANT

VERSUS

MUNICIPAL COUNCIL OF NAIVASHA.....1ST RESPONDENT

DIRECTOR OF PHYSICAL PLANNING.....2ND RESPONDENT

AND

SUSAN WANJIRU WANG'OMBE.....INTERESTED PARTY

EX-PARTE

ESTHER WANJIRU

RULING

(Suit seeking orders inter alia of mandamus to have a development demolished; order of mandamus issued; ex-parte applicant now wishing to be allowed to execute the order; application premature as there has been no motion to have the respondent compelled to execute the order)

1. The ex-parte applicant filed this judicial review motion in 1 November 2006 seeking orders inter alia of certiorari to quash the respondents' decision to permit development in a certain disputed plot of land described as Plot No. 199 which was contended to have been in an unapproved plan and an order mandamus to compel the respondents to demolish the development carried out in the Plot No. 199 which implemented the development plan in issue. I heard the case and delivered my ruling on 22 April 2015.

2. The case of the ex-parte applicant was that she is proprietor of a plot identified as Plot No. 86 having purchased it from one John Mromojo Eragai, the original allottee in the year 1992. She contended that the Municipal Council of Naivasha had now implemented the impugned plan which had the effect of introducing a Plot No. 199, owned by the interested party, and lodging it between her plot and the neighbouring Plot No. 87, the effect of which was to squeeze the ex-parte applicant's Plot No. 86. What prompted her to sue, was that the interested party had entered the Plot No. 199 and commenced developments on it.

3. In my findings, I found that there was a development plan of 1982 identified as R59/82/1. This plan was superseded by the plan R59/90/3 (the 1990 plan) which is the plan that introduced the Plot numbers 86 and 199 in issue in this case. There was the plan R59/91/2 (the 1991 plan) which had never been

approved, but which plan relocated the Plot No. 199 to its present site, that is between the plots No. 86 and 87. I held that the plan of 1991 being an unapproved plan, could not be implemented, and therefore it was wrong to import the Plot No. 199 and lodge it between Plot No. 86 and 87.

4. In my final orders, I issued an order of certiorari, quashing the decision to implement the unapproved plan of 1991 which relocated the Plot No. 199 to affect the ex-parte applicant's plot No. 86. I also issued an order of prohibition, prohibiting the Municipal Council of Naivasha from implementing the said unapproved plan. On the prayer for mandamus, I gave the interested party 90 days within which to demolish her structures and restore the land to its original position. If she did not proceed to do so, I issued an order of mandamus compelling the County Government of Nakuru, to proceed and demolish the structures and restore the land and recover the costs thereof from the interested party.

5. Through an application dated 13 July 2016 and filed on 14 July 2016, the ex-parte applicant has asked for leave to engage her private surveyor to restore the position of her Plot No. 86 and demarcate and beacon the same and also appoint an auctioneer to demolish the structures in the said plot so that vacant possession may be delivered to her. She has filed this application because the County Government of Nakuru and the interested party have failed to implement the court ruling. She has decided to move the court to ask for these orders because she is the one who is suffering.

6. The 1st respondent has filed Grounds of Opposition to oppose the motion. It is averred that the ex-parte applicant ought to file an application to commit an officer of the 1st respondent to jail for disobeying the order of mandamus. It is contended that the ex-parte applicant seeks to review the ruling of this court through the back door. It is averred that the ruling is capable of being complied with if an officer of the 1st respondent is summoned to show cause.

7. I have considered the application. It will be observed that the ex-parte applicant had sought orders of mandamus, as I have described above, to have the developments in the purported Plot No. 199 demolished so that the Plot No. 86 can be restored. I allowed that prayer. It is now incumbent on the 1st respondent to act according to that order of mandamus. That is an order of the court directed at the 1st respondent, and its successor in title, and it is them obligated to execute it. That does not mean that I cannot allow the ex-parte applicant to execute the order, I may very well do so, but I need first to know why the 1st respondent has not complied with the order before I can allow the ex-parte applicant to execute it.

8. I therefore find this application premature as the avenue of seeking compliance by the 1st respondent and its successor in title has yet to be exhausted. I direct the ex-parte applicant to file an appropriate application seeking the 1st respondent and its successor in title, compelled to execute the ruling of this court. It is for that reason that I decline to allow this application. It is dismissed but with no orders as to costs.

9. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 22nd day of June 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of:

Mr. Karanja Mbugua for the applicant.

Mr. Bosire holding brief for Mr. Konosi for the respondent.

Court Assistant: Nelima .

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU