



REPUBLIC OF KENYA
IN THE E.L.C. COURT OF KENYA AT EMBU
MISC E.L.C NO. 42 OF 2015

IN THE MATTER OF APPLICATION FOR ORDERS OF *MANDAMUS*

AND

IN THE MATTER OF ARTICLES 35 AND 47 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE LAND REGISTRATION ACT

REPUBLIC.....APPLICANT

VERSUS

THE DISTRICT LAND REGISTRAR EMBU.....RESPONDENT

JUDGEMENT

1. The ex-parte applicant filed a Chamber Summons dated 3rd December 2015 seeking leave to apply for judicial review orders of mandamus against the Respondent. The said application for leave was accompanied by a statutory statement dated 3rd December 2015 and a verifying affidavit sworn by the ex-parte applicant on the same date.
2. The said application for leave was heard by the Hon. Justice Boaz Olao on 2nd February 2016 who allowed the same on 5th February 2016. The Honorable Judge directed that the substantive Notice of Motion be filed within 21 days and that all parties who may be directly affected be served.
3. The Notice of Motion was filed on 26th February 2017 seeking the following orders:
 - i. An order of *mandamus* to:
 - a) Command the District Land Registrar Embu to furnish the *ex-parte* applicant with mutation forms or certified copies thereof in respect of parcel No. Gatari/Nembure/2683.
 - b) Command the District Land Registrar Embu to furnish the *ex-parte* applicant with application forms for consent and the letter of consent from the Land Control Board for sub-division of parcel No. Gatari/Nembure/2683 or certified copies thereof.
 - c) Command the District Land Registrar Embu to furnish the *ex-parte* applicant with the application forms to the Land Control Board for consent to transfer and letters of consent for transfer of parcel

Nos Gaturi/Nembure/3461, 3462 and 3463 and the transfer forms for the said parcels purportedly from the name of the *ex-parte* applicant to the other persons or certified copies thereof.

ii. The Costs of the application be provided for.

4. It would appear from the statutory statement that the *ex-parte* applicant was the registered proprietor of Title No. Gaturi/Nembure/2683. The said parcel of land was later on sub-divided into four parcels of land namely, Gaturi/Nembure/3461, 3462, 3463 and 34640. The first 3 parcels were transferred to third parties some of whom have further sub-divided the parcels.

5. The *ex-parte* applicant states in her statutory statement that she is not aware of such sub-divisions and transfers of the said parcels of land and was not party to those transactions. She, therefore, sought to have copies of the relevant supporting documents specified in the orders sought from the Respondent.

6. According to the exhibits attached to the application for leave, the *ex-parte* applicant's advocate wrote at least two letters to the Respondent seeking the documents specified in the application. There does not appear to have been any response to the said letters and the applicant has stated as much in her application.

7. The Respondent and the Attorney General were duly served but they did not appear or of file any response to the said application for judicial review. The court therefore allowed the *ex-parte* applicant to proceed *ex-parte*.

8. The application is based upon the general right of the citizen to access information held by the state under Article 35 of the Constitution of Kenya 2010 and the specific obligation of the Land Registrar to provide information under section 10 of the Land Registration Act of 2012.

9. Article 35 (1) of the Constitution of Kenya provides, *inter alia*, that;

“Every citizen has the right of access to:

a) Information held by the state; and

b) Information held by another person and required for the exercise or protection of any right or fundamental freedom.”

10. The court is aware that Parliament enacted the **Access to Information Act** in 2016 after the filing of the instant application but that does not weaken or defeat the *ex-parte* applicant's case since the right of access to information is enshrined in the Constitution of Kenya. The absence of enabling legislation did not render impotent the constitutional right under Article 35.

11. The court is satisfied that the Respondent has a constitutional obligation as well as a statutory obligation under the Access to Information Act 2016 and the Land Registration Act 2012 to provide the information sought by the *ex-parte* applicant. No legal justification or excuse has been pleaded by the Respondent to justify its failure or refusal to supply the information and documents sought.

12. The court has noted that the *ex-parte* applicant seeks not only certified copies of the consent of the Land Control Board but also the application form for such consent. Whereas the Land Registrar is expected to receive and keep the consent of the Land Control Board, the *application* for consent would ordinarily be kept in the custody of the Land Control Board and not the Land Registrar.

13. Consequently, the Notice of Motion dated 26th February 2016 is hereby allowed and the Respondent is required to furnish the *ex-parte* applicant with *certified copies* of the documents specified in the application save the *application* for consent of the Land Control Board. The *ex-parte* applicant is at liberty to obtain the application form from the relevant Land Control Board. The Respondent shall supply certified copies of the documents within 30 days from the date of service of this order.

14. Since the *ex-parte* applicant has succeeded in the application and the Respondent has not shown any justification for the failure or delay in supplying the information, the *ex-parte* applicant shall have the costs of the application.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **12th** day of **JUNE 2017**.

In the presence of Mr Okwaro for the ex-parte applicant and in the absence of the Respondent.

Court clerk Mr Njue/Leadys

Y.M. ANGIMA

JUDGE

12.06.17