



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
PETITION NO. 35 OF 2016

TRUSTED SOCIETY OF HUMAN RIGHTS ALLIANCE PETITIONER

VERSUS

MOHAMMED HUSSEIN MULLA NANJI TRUST.....1ST RESPONDENT

NATIONAL LAND COMMISSION 2ND RESPONDENT

THE ATTORNEY GENERAL3RD RESPONDENT

RULING

1. Pursuant to judgment dated 20th April 2017, the petition herein was dismissed with costs to the first respondent. Subsequently on 4th July 2017, the petitioner filed Notice of Motion dated 3rd July 2017. It happened that judges were away at the judges' annual colloquium when the application was filed. Consequently, the file was placed before the Deputy Registrar who made the following orders on 11th July 2017:

1. *THAT the application is certified as urgent.*

2. *THAT pending the hearing and the determination of this application inter-partes, this honourable court be and is hereby pleased to stay the execution of the decree of 20th April, 2017 and subsequent orders thereto.*

3. *THAT this honourable court be and is hereby pleased to restrain the respondents by themselves, their agents or servants from proceeding with any dealings relating to the transfer, lease, alienation, charging, disposing or in any way interfering with the land parcel KIAMBOGO/KIAMBOGO BLOCK 2/527 & 528 pending the hearing and determination of this application.*

4. *THAT the matter be mentioned on the 26th July, 2017 for purposes of fixing a hearing date.*

2. As can be seen above, the Deputy Registrar scheduled the matter for mention on 26th July 2017 for purposes of taking a hearing date for the application before the judge.

3. When the matter came up for inter parte hearing, Mr. Tugee learned counsel for the 1st respondent urged the court to discharge or set aside the orders of 11th July 2017. Counsel contended that order 49 rules 6 and 7 give specific instances where a Deputy Registrar can make orders. He submitted that the application that was before the Deputy Registrar was not brought under any of those provisions and

consequently, the orders of 11th July 2017 are invalid. Counsel further submitted that ex parte orders should last no more than 14 days yet the orders of 11th July 2017 were worded to last more than 14 days.

4. In response, Mr. Ogola learned counsel for the petitioner submitted that the Deputy Registrar had powers to make the orders under clause 21 of Environment and Land Court Practice Direction No. 19 of 2014. Further that the practice directions do not limit the orders granted by a Deputy Registrar under them to last only 14 days. Counsel, therefore urged the court to dismiss the oral application made by the 1st respondent.

5. I have considered the submissions. Pursuant to Gazette Notice No. 5178 which was titled **Practice Directions on Proceedings in the Environment and Land Courts, and on Proceedings Relating to the Environment and the Use and Occupation of, and Title to Land and Proceedings in Other Courts**, the Chief Justice issued certain practice directions. Clause 21 of the said practice directions state:

In the absence of a Judge in the station, all interlocutory applications of an urgent nature shall be placed before a Deputy Registrar in the station who will have the discretion to grant interim orders pending the listing of the application before the Judge for further directions/orders or hearing.

6. I therefore find and hold that the Deputy Registrar had jurisdiction to issue the orders. The application by counsel for 1st respondent seeking discharge or setting aside of the orders of 11th July 2017 is dismissed with costs.

Dated, signed and delivered in open court at Nakuru this 31st day of July 2017.

D. O. OHUNGO

JUDGE

In the presence of:

Mr. Langat for the petitioner

Mr. Kimatta holding Mr. Tugee for the 1st respondent

Court Assistant: Gichaba