



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT ATNAIROBI**

**ELC.JR.APPL. NO.17 OF 2017**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW  
ORDERSIN THE NATURE OF CERTIORARI, PROHIBITION AND MANDAMUS**

**BETWEEN**

**BLOCK SEVEN DEVELOPERS LIMITED.....APPLICANT**

**VERSUS**

**CHIEF LAND REGISTRAR.....1<sup>ST</sup> RESPONDENT**

**THE REGISTRAR OF TITLES.....2<sup>ND</sup> RESPONDENT**

**HON. ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**RULING**

What is before me is an ex parte Chamber Summons application dated 14<sup>th</sup> June, 2017 by Block Seven Developers Limited (hereinafter referred to only as “the applicant”) seeking leave to institute judicial review application for orders of Certiorari, Prohibition and Mandamus against the respondents and for such leave if granted to operate as a stay of the decision sought to be challenged. The application has been brought on the grounds set out in the verifying affidavit of Lameck Omondi Ondiek sworn on 14<sup>th</sup> June, 2017 and the Statutory Statement of the same date. The applicant has contended that it is the registered owner of all that parcel of land known as Land Reference Number 9042/574 (Title No. I.R 67346) (hereinafter referred to as “the suit property”). The applicant has contended that on 17<sup>th</sup> January, 2017, the respondents cancelled the applicant’s title over the suit property purportedly under sections 14 and 79 of the Land Registration Act, 2012. The applicant has contended that the said action by the respondents was taken without notice having been given to it and without giving it a hearing. The applicant has contended that the respondents have no jurisdiction to cancel a title. The applicant has contended further that the respondents have failed and/or refused to issue it with a provisional certificate of title for the suit property which it acquired at a public auction without giving any reason. The applicant has contended that the decision by the respondents to cancel its title and to deny it a provisional certificate of title for the suit property is procedurally unfair, unlawful and unconstitutional.

I have considered the applicant’s application together with the statement and verifying affidavit filed in support thereof. I have also considered the applicant’s advocate’s submissions that were made before me on 20<sup>th</sup> September, 2017. I am satisfied from the material before the court that the applicant has established an arguable case against the respondents with regard to their decision made on 17<sup>th</sup> January, 2017 to cancel the applicant’s title over the suit property and for their failure to issue the applicant with a provisional certificate of title. In the Court of Appeal case of Njuguna vs. Minister for Agriculture [2000] 1 E.A 184, it was held that,

*“the test as to whether leave should be granted to an applicant for judicial review is whether, without examining the matter in any depth, there is an arguable case, that the reliefs might be granted on the hearing of the substantive application.”*

The applicant has demonstrated that it was at all material times the registered owner of the suit property

and that its title to the said property was cancelled by the 2<sup>nd</sup> respondent on 17<sup>th</sup> January, 2017. The applicant has also demonstrated that it applied for a provisional certificate of title for the suit property and that its application was published in the Kenya Gazette of 7<sup>th</sup> October, 2016 by the 2<sup>nd</sup> respondent. The applicant has contended that it was not given an opportunity to be heard before the cancellation of its title. The applicant has also contended that the respondents have no power to cancel a title. The applicant has contended further that the respondents have not given it any reason for their refusal to issue it with a provisional certificate of title for the suit property after the expiry of the Gazette Notice. These claims if proved would amount to a violation of the applicant's right to a fair administrative action.

Whether or not leave to apply for an order of certiorari or prohibition should operate as a stay is a matter for the discretion of the court. Like any other discretion, it must be exercised judicially and in accordance with the established legal principles. I am of the view that there is nothing to stay. The applicant's title has been cancelled. The court cannot stay a decision which has been made and executed. In any event, I have noted that an order vesting the suit property upon the applicant still remains in the register of the suit property as entry number 3. There is no likelihood therefore of the property being alienated while the judicial review application is pending.

The upshot of the foregoing is that the applicant's application dated 14<sup>th</sup> June, 2017 succeeds in part. The same is allowed in terms of prayers (b), (c), (d) and (e) thereof. The costs of the application shall abide the outcome of the judicial review application.

**Delivered and Signed at Nairobi this 29<sup>th</sup> day of September 2017.**

**S. OKONG'O**

**JUDGE**

Ruling read in open court in the presence of:-

Mr. Gilbert for the Applicant

Kajuju Court Clerk