



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
AT NAKURU
JUDICIAL REVIEW CASE NUMBER 34 OF 2016
IN THE MATTER OF TITLE NUMBER I.R NO.67258
L.R NO.20229/1
AND
IN THE MATTER OF THE NATIONAL LAND COMMISSION
REPUBLIC.....APPLICANT
VERSUS
NATIONAL LAND COMMISSION.....RESPONDENT
EX-PARTE
SOLAI RUIYOBELI FARM LIMITED.....EX-PARTE
JUDGMENT

(Judicial Review motion to stop the National Land Commission from issuing title to some alleged squatters; ex-parte applicant holding title deed to suit land; land being private land; an agreement entered between ex-parte applicant to exchange suit land and ex-parte applicant wishing to cancel it; allegation that respondent wants to acquire the land compulsorily without following due process or pressure the sale; modified orders issued in relation to the motion)

1. This is a judicial review motion and as drawn it seeks the following orders :-

- (i) *Judicial review orders of prohibition directing (sic) upon the National Land Commission, restraining the said Land Commission, its official, servants or any other entity acting at its behest from holding any meeting, carrying out any investigations and/or inquiry as to the ownership; part ownership of parcel of land known as I.R No. 67258, LR No. 20229/1 the property of the applicant; preparing a list or further list of purported squatters or any other person purporting to be a squatter over the same and/or purporting to make Orders, directions or resolutions affecting the said parcel of land and/or compelling the applicant to honour a revoked Deed of Exchange between Lari Nyakinyua (Solai Farm) Ltd and the applicant made on the 24th day of April 2003 and/or purporting to summon the ex parte applicant, its directors, members and/or shareholders to meetings with a view to compel the exp parte applicant to honour the revoked Deed of Exchange between itself and Lari Nyakinyua (Solai Farm) Ltd and/or to discuss issues relating to the*

acquisition by the National Land Commission of land parcel NO. IR No. 67258 LR No. 20229/1 or part of it for the purported squatters and/or vetting or purporting to vet squatters with a view to allocate them land parcel IR No. 67258 LR No. 20229/1 or part thereof until such time as the respondent shall have complied with the law.

(ii) Judicial Review orders of Certiorari to bring to this court, the Register prepared by the National Land Commission in the month of August 2016 after the purported vetting of squatters between the 9th day of May 2016 and the 17th day of May 2016, dubbed "List of Profiled Squatters in Ruiyobei/Ol-Jorai Farm" for purposes of quashing the same.

(iii) That costs of this application be borne by the respondent.

2. The motion is supported by the affidavits of Charles Olara Chebet, and Richardson Kipkoech Bundotich.

3. Despite being served, no appearance nor any document to oppose the motion was filed by the respondent. In essence the facts as deposed are not challenged by the respondent.

4. The ex-parte applicant is a limited liability company and has over 1,300 members. The land parcel LR No. 20229/1 (Grant I.R No. 67258) (hereinafter 'the suit land') is registered in the name of the ex-parte applicant having purchased it in the year 1995. It is averred that this land is private property. It is alleged that the National Land Commission intends to acquire the whole or part of the suit land to settle some squatters yet the ex-parte applicant has not consented to the said acquisition. It is contended that the respondent is mandated to publish the said acquisition in the Kenya Gazette pursuant to the provisions of the Land Act, 2012 and such notice must be served. It is stated that no such notice has ever been published nor served, yet the respondent in the month of August 2016, has gone ahead to vet squatters and has prepared a list dubbed, 'List of profiled Squatters in Ruiyobei Oljorai Farm'. It is averred that between 9 May 2016 and 17 May 2016, and on 29 September 2016 and 26 October 2016, the respondent held meetings on the suit land, in their Nakuru Regional Headquarters and in Solai, where the respondent has been trying to compel the ex-parte applicant to honour a revoked Deed of Exchange made on 24 April 2003 between the ex-parte applicant and Lari Nyakinyua (Solai Farm) Ltd. It is averred that the issues relating to this Deed of Exchange are the subject of Nakuru ELC Case No. 532 of 2013 which is still pending in court. It is further averred that compelling the ex-parte applicant to honour the Deed of Exchange is ultra vires the jurisdiction of the respondent.

5. As I have mentioned, the respondent has not filed anything to contest this motion. I have seen from the Certificate of Title annexed by the ex-parte applicant, that they do own the suit land, having become registered as proprietors on 8 December 1995. It does appear that on 24 April 2003, the ex-parte applicant entered into a Deed of Exchange over the suit land, with the entity known as Lari Nyakinyua (Solai Farm) Ltd, so as to exchange the suit land with the land parcels LR Nos. 7364, 2680, and 2211. This deed of exchange is the subject of the suit, Nakuru ELC No. 532 of 2013, which case is still pending. It is not very clear to me how the respondent has gotten itself involved in the issues concerning the suit property, but I have seen excerpts from the print media, annexed to the motion, showing that the National Land Commission, through its Chairman have been trying to have the parties resolve their suit out of court. Also annexed is a list prepared by the respondent titled, "List of Profiled Squatters in Ruiyobei/Ol-Jorai Farm, LR No. 20229/1 and LR No. 20229/2". It is not apparent from the evidence tabled, what exactly the National Land Commission intend to do with this list. It is of course the claim of the ex-parte applicant that the respondent want to settle these mentioned squatters, on the suit property, which the ex-parte applicant is not agreeable to, and they therefore want this list quashed.

6. I have considered the motion. My view is that the first prayer of the motion is too winded and too open ended, and it was best severed. I have no problem with issuing an order of prohibition to stop the respondent from allocating the suit land to these so called squatters. But it does seem to me that a lot of what is displayed here is a sort of mediation attempt by the respondent to settle a long running dispute and you cannot fault any person for attempting to mediate a dispute. The outcome of any mediation is of course not binding to the parties unless the parties themselves agree to be bound by the terms of

settlement. I do not know what the list of squatters is supposed to demonstrate but if it is only a list of what the respondent believes are persons occupying the suit land, then I see no purpose in quashing it. In essence, I am of the view that the prayers sought, although not completely out of place, are not properly worded and they need to be modified.

7. In my discretion, I make the following final orders :-

(i) An order of prohibition is hereby issued stopping the National Land Commission from allocating the land parcel LR NO. 20229/1 (Grant I.R No. 67258) to the persons listed in the document titled "List of Profiled Squatters in Ruyobei/OlJorai Farm LR No.20229/1 and LR No. 20229/2" or to any other person without first following the due process provided for a compulsory acquisition.

(ii) There shall be no order as to costs.

8. It is so ordered and directed.

Dated, signed and delivered in open court at Nakuru this 25th day of September 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of: -

Mr. Olonyi for the ex-parte applicant

No appearance for the respondents

Court Assistant: Toroitich

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU