



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MILIMANI

ELC CASE NO. 11 OF 2017

IN THE MATTER OF : AN APPLICATION BY JITESH SHAH, OSHWAL EDUCATION & RELIEF BOARD AND OSHWA UNIVERSITY TRUST FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS

-AND-

IN THE MATTER OF: THE ADVOCATES ACT CHAPTER 16 OF THE LAWS OF KENYA

-AND-

IN THE MATTER OF: ADVOCATES REMUNERATION ORDER 2009 AS AMENDED BY THE ADVOCATES (REMUNERATION) (AMENDMENT) ORDER 2014

IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTION ACT, 2015

JITESH SHAH.....1ST APPLICANT

OSHWAL EDUCATION & RELIEF BOARD.....2ND APPLICANT

OSHWAL UNIVERSITY TRUST.....3RD APPLICANT

-VERSUS-

THE HON. DEPUTY REGISTRAR ENVIRONMENT & LAND COURT

NAIROBI.....RESPONDENT

-AND-

KOKI MBULU & CO. ADVOCATES.....INTERESTED PARTY

RULING.

1. The ex-parte applicant filed a chamber summons dated 6th January 2017 seeking leave to file an application for judicial review orders targeting the decision of the Deputy Registrar of the Environment & Land Court. Before the application could be heard, the interested party raised a preliminary objection on the grounds that the application is unconstitutional and that the court lacks jurisdiction to entertain the same.

2. The Court directed that parties dispose of the preliminary issue by way of written submissions. The interested party filed their submissions on 20th February 2017. The ex-parte applicants filed their submissions on 28th February 2017. From the submissions filed by the interested party, the following are the grounds upon which the preliminary objection is based.

a. No leave of court was obtained as contemplated in Order 53 Rule 1 of the Civil Procedure Rules.

b. The Attorney General was wrongly enjoined in the proceedings.

c. The ex-parte applicants filed the application in a court without jurisdiction.

d. A Judge of the Environment & Land Court cannot deal with a matter which was erroneously filed in the High Court.

e. No application for judicial review can be brought against a judicial officer as judicial officers are not quasi-judicial bodies amenable to judicial review orders.

3. I will deal with the grounds as set out in paragraph (2) hereinabove. **No leave was obtained as contemplated in order 53 Rule 1 of the Civil Procedure Rules 2010.**

4. This ground has no merit. The ex-parte applicants are seeking leave to bring up a substantive motion for judicial review orders. That application is yet to be heard and therefore the issue of leave not being granted does not arise.

The attorney General was wrongly enjoined in the proceedings.

5. The interested party is contending that the Attorney General should not have been sued in these proceedings. This is an application for leave to file a substantive application for judicial review orders. The Attorney General is a necessary party in such proceedings. In Nairobi High Court miscellaneous Civil application No. 555 of 2006, between **Evangelical Lutheran Church in Kenya Registered Trustees and Commissioner of Lands and others**, Justice Nyamu as he then was quoted the holding by Justice Wendo in the case of **Evans Musungu** where the judge held as follows:-

“Judicial Review orders are sought in the name of the Republic because judicial Review is a mechanism that the state has put in place to check excesses of its officers, authorities and tribunals”.

The Attorney General is the one who represents the Government and hence a necessary party in these proceedings. It cannot therefore be argued that the Attorney General should not have been enjoined in the proceedings.

The ex-parte applicants filed the application in a court without jurisdiction.

6. The interested party argues that the application was filed in the Judicial Review Division of the High Court when it should have been filed in the Environment & Land Court. This argument would have been valid were it to be raised before the Judicial Review Division of the High Court where this matter was initially filed. This has however been overtaken by events in that the Judge in that Division acted **Suo Moto** and referred the application to the Environment and Land Court after noticing that the litigation involved a transaction arising out of land which is the preserve of the Environment and Land Court. The matter is now before the Environment and Land Court and there is no point of raising the issue which has already been settled. The interested party seems to take issue with the manner in which the staff at the Judicial Review Division acted in sending the file to the Environment and Land Court. The staff at the Judicial Review Division were simply acting on the orders of a judge and there was no need for either party to make a formal application for transfer because the Judge in that Division had already made an order for transfer.

A Judge of the Environment and Land Court cannot deal with a matter which was erroneously filed in the High Court.

7. This matter having been transferred to the Environment & Land Court for hearing and disposal, there is no basis, upon which the court can uphold an argument that since the matter had been filed in the High Court, the Environment and Land Court has no jurisdiction to deal with it. This case is before the Environment & Land Court which has jurisdiction to grant any reliefs including judicial review orders.

No application for judicial review can be brought against a judicial officer as judicial officers are not quasi-judicial bodies amenable to judicial review orders.

8. The ex-parte applicants are seeking to have the decision of the Deputy Registrar subjected to Judicial Review orders. The genesis of the application being attacked is the decision of the Deputy Registrar in her administrative powers to deal with taxation of bills. It is being contended that the Deputy Registrar exceeded her jurisdiction in the case being complained of. If that is found to be true, then the Deputy Registrar being under the supervision of this Court her decisions may be challenged through Judicial Review. In **Republic Vs Chief Magistrate Milimani Commercial Courts & 2 Others Ex-parte ,Violet Ndanu Mutinda & 5 Others (2014) ECLR** Justice Odunga found that the decision of a Chief Magistrate was amenable to Judicial Review . He granted Judicial Review orders which were sought. It is therefore clear that the preliminary objection raised by the interested party lacks merit. The same is hereby dismissed with costs to the ex-parte applicants.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 25th day of October, 2017.

E.O.OBAGA

JUDGE

In the presence of :

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Court Assistant:

E.O.OBAGA

JUDGE