



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 266 OF 2017

NAREIYO KORIATA.....PLAINTIFF

-VERSUS-

DISTRICT LAND REGISTRAR NAROK NORTH.....1ST DEFENDANT

PROVINCIAL SURVEYOR, RIFT VALLEY PROVINCE.....2ND DEFENDANT

DISTRICT SURVEYOR, NAROK NORTH/ SOUTH DISTRICT.....3RD DEFENDANT

NADUATARI KORIATA.....INTERESTED PARTY

RULING

The Applicant had by a chamber summons dated 18th November, 2011 sought for leave of the honourable court to institute Judicial Review proceedings seeking for an order of certiorari to quash the directives of the 1st Respondent contained in a letter dated 2nd November 2011 and an order of prohibition to prohibit the 2nd and 3rd Respondent from enforcing the 1st Respondent's directive and he further sought for an order that the grant of the leave to operate as stay of enforcement of the 1st Respondent's directive.

When the Application was brought before court the learned judge granted leave to commence the present proceedings in terms of the prayers sought in aforesaid motion leading to the filing of the present Notice of Motion dated 23rd November, 2011 seeking an order of certiorari to quash the directive of 1st Respondent.

The genesis of the present application is that the Applicant and her husband are the registered proprietors of a parcel of land known as Narok Cis Mara/Ololunga/483. The interested party is the owner of parcel No. Narok Cis Mara/Ololunga/483 and she is the co-wife of the Applicant.

The Applicant contends that this matter was amicably resolved in 2009 between the Applicant, her husband and the interested party signed a consent was prepared and the record rectified by the Land Registrar, however on or about 13th November, 2011 the Applicant learnt of a letter dated 2nd November, 2011 addressed to the 2nd Respondent directing him to amend the Registry Index Map (RIM) to reflect the position prior to the amendment effected through a mutation dated 5th May, 2009.

The Applicant contends that the registrar never gave the Applicant Notice of the intention to amend the RIM and if effected he will loss a portion of his land and further that the directive was ultra vires, offensive, unreasonable and will violet his rights to property and hence this application.

The Application was opposed by the Respondent and the interested party who filed their replying affidavits denying the averments of the Applicants and stating that the exparte applicant is not candid and has not come to court with clean hands. The 2nd Respondent contends that the 3rd Respondent submitted a mutation which was amended and final RIM (Registry Index Map) as per the original sub-division.

When the matter came up for hearing the parties agreed to file written submissions so as to dispose the Application.

I have read the rival submissions and the issue for determination before me is whether the letter by the 2nd Respondent was ultra vires and exceed the powers of the 2nd Respondent and whether the Applicant was accorded a hearing from the pleadings filed. The Applicant confirms that indeed the 2nd Respondent has powers to rectify anomalies in the register pursuant to the provisions of section 142 of the Registered Land Act Cap 300. (Now repeated).

Further to the above the Applicant does not dispute that the parties herein had presented themselves to the registrar voluntarily to have the register rectified and it is after failing to have their way that they filed this suit here.

From the pleadings the letter of 2nd November, 2011 was addressed to all those who had consented to the rectification and it is my finding that the 2nd Respondent did not exceed his powers and accordingly I hold that the application for Judicial Review is not merited and the same must fail.

Since the dispute for the parties relate to boundary I direct that the 2nd Respondent and the registrar to visit the suit land and accordingly fix the boundary as between the parties under section 18 and 19 of the Lands Act and file a report in court within 60 days.

Dated, Signed and Delivered in open court at **NAROK** on this **22nd** day of **December, 2017**

Mohammed Noor Kullow

Judge

In the presence of:-

Mr Kinyanjui for interested party

Mr Morintat for exparte/Applicant

N/A for the Respondent

Mohammed Noor Kullow

Judge

22/12/17