



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC JR NO. 18 OF 2017

SEMA HEALTH CARE PRODUCTS LIMITED.....APPLICANT

VERSUS

THE REGISTRAR OF TITLES.....1ST RESPONDENT

DIRECTOR OF SURVEYS2ND RESPONDENT

AND

FRANCIS KIONGO MUTURI.....1ST INTERESTED PARTY

KENNEDY NG'ANG'A MARANGA.....2ND INTERESTED PARTY

HITESH MORJARIA.....3RD INTERESTED PARTY

VIJAY MORJARIA.....4TH INTERESTED PARTY

RULING

1. I have considered the chamber summons dated 12/6/2017 through which the *ex parte* applicant seeks leave of this court to bring a substantive motion seeking orders of certiorari, mandamus and prohibition against the respondents and the interested parties.

2. Grant or refusal of leave is an exercise of judicial discretion. The general test to be applied is whether the applicant has made out an arguable case to warrant grant of leave [see ***UWE MEIXNER & ANOTHER V ATTORNEY GENERAL, (2005) eKLR***. Secondly, the purpose of the application for leave is to eliminate applications which are frivolous, vexatious or hopeless and ensure that only those applications disclosing arguable cases proceed for further consideration. Thirdly, when considering an application for leave, the court seized of the application is required to consider the appropriateness of judicial review proceedings *vis-à-vis* other modes of seeking judicial redress, taking into account the limited efficacy of judicial review, the nature of evidence necessary in the particular case, and the key parties involved in the dispute.

3. In the present application, the *ex parte* applicant has made allegations of fraud leading to the registration and issuance of Grant Number IR 135260 in the names of Francis Muturi and Kennedy Ng'ang'a Maranga. It is contended that the suit property was originally allocated to Sema Health Care Products Limited who procured a banker's cheque for KShs.254,967 to cover among other payments, stand premium. It is alleged that the same cheque was used to process title in favour of the 1st and 2nd interested parties. The suit property was subsequently disposed to the 3rd and 4th interested parties.

4. It is clear from the foregoing there are serious allegations of fraud levelled against the respondents and the 1st and 2nd interested parties in the present application. In the circumstances, it is my view that judicial review proceedings would not be an appropriate and efficacious mode of bringing judicial proceedings to effectually adjudicate and settle the dispute in this matter. A suit by way of plaint would be appropriate and more efficacious. For this reason, I decline to grant leave. I direct the *ex parte* applicant to bring suit by way of plaint seeking appropriate orders.

Dated, signed and delivered at Nairobi on this 14th day of December, 2017.

B M EBOSO

JUDGE

In the presence of:

Koki Mbulu: for the *ex parte* Applicant

.....: for the 1st respondent

.....: for the 2nd respondent

.....: for the 1st interested party

.....: for the 2nd interested party

.....: for the 3rd interested party

.....: for the 4th interested party

Halima Abdi: Court Assistant