



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

JR NO 2 OF 2016

GRACE LYNNETTE OCHOLLAAPPLICANT

VERSUS

NAKURU COUNTY GOVERNMENTRESPONDENT

AND

ISAAC GITHIGA GITOGO.....INTERESTED PARTY

RULING

(Application for leave to commence judicial review proceedings for certiorari, mandamus and prohibition; applicant stating that she purchased the suit property but the County Government of Nakuru is manipulating the records and appears to have given the property to a third party; 6 month period for filing judicial review proceedings; not clear when the decision if any was made; in absence of clarity on time, leave denied; applicant advised to file an ordinary civil suit)

1. The application before me is for leave to commence judicial review proceedings for the following orders :-

(i) An order of certiorari to bring to the High Court for purposes of being quashed the decision by the respondent to alter the records of ownership of property to title No. Nakuru Municipality Block 1/1965 (old number Pangani USAID Plot NO. 28) by which it deleted the applicant's name and recorded the interested party as the proprietor.

(ii) An Order of prohibition against the respondent barring it from preparing and registering a Certificate of Lease in favour of the interested party.

(iii) An order of mandamus compelling the respondent to delete the name of the interested party from the record of ownership of the suit property and re-record thereon the name of the applicant Grace Lynette Ocholla and her co-owner Hellen Atieno Otieno or that of Thomas Abumba.

(iv) That the said leave, if granted do operate as a stay of any precipitate action that would adversely affect the applicant's rights and interests in the suit property pending the hearing and determination of the application for Judicial Review.

2. The application is accompanied by the usual Statement of Facts and a Supporting Affidavit of Grace

Lynette Ocholla.

3. In brief, the case of the applicant is that in the 1980s the Municipal Council of Nakuru developed a housing scheme known as Pangani USAID Estate. The beneficiaries of the Scheme were allocated a plot on which stood a house the purchase of which was financed by a loan scheme from USAID. The disbursement of the loan was managed by the then Municipal Council of Nakuru. The Plot No. 28 (the suit property) was allocated to one Thomas Abumba. On 23rd October 1985, Grace Lynette Ocholla (the applicant) and Hellen Atieno Otieno, purchased the said plot from Thomas Abumba. They took over the property and serviced the loan and rented out the house on it. Mr. Abumba applied to the Municipal Council to transfer the plot to the two purchasers but the Municipal did not do it but instead maintained the name of Mr. Abumba. On 6th October 2015, the applicant asked to be issued with a rates demand to enable them pay rates but were shocked to find that the demand note indicated the Interested Party as the rate payer. The applicant wrote to the County Government of Nakuru, the successor to the Municipal Council of Nakuru for an explanation but no response was received. The applicant fears that the County Government intends to conspire to grab what she considers to be her property. It is for those reasons that she has asked for the orders sought.

4. I have considered the application. I am not too sure of when the decision, if any, to change the name of the owner of the suit property was made. It should be observed that the limitation period for an action in the nature of judicial review is only 6 months. This is laid out in Section 9 of the Law Reform Act, and Order 53 Rule 2 of the Civil Procedure Rules which provide as follows :-

9. Rules of court

(1) Any power to make rules of court to provide for any matters relating to the procedure of civil courts shall include power to make rules of court—

(a) prescribing the procedure and the fees payable on documents filed or issued in cases where an order of mandamus, prohibition or certiorari is sought;

(b) requiring, except in such cases as may be specified in the rules, that leave shall be obtained before an application is made for any such order;

(c) requiring that, where leave is obtained, no relief shall be granted and no ground relied upon, except with the leave of the court, other than the relief and grounds specified when the application for leave was made

(2) Subject to the provisions of subsection (3), rules made under subsection (1) may prescribe that applications for an order of mandamus, prohibition or certiorari shall, in specified proceedings, be made within six months, or such shorter period as may be prescribed, after the act or omission to which the application for leave relates.

Order 53 Rule 2 : Time for applying for certiorari in certain cases [Order 53, rule 2.]

Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

5. The applicant intends to file an action for certiorari to quash the alleged decision of the County Government, but the said decision is not annexed and even if not annexed, it is not clear to me when such decision, if any, was made. I cannot therefore tell whether the said decision is within the 6 month limitation period.

6. The other orders of mandamus and prohibition to me, are closely tied to the order of certiorari and cannot survive without first obtaining an order of certiorari.

7. I am not therefore convinced that this is a fit case for the grant of leave to commence the intended judicial review proceedings and I dismiss this application but with no orders as to costs.

8. All is not lost for the applicant. The applicant can still file an ordinary civil suit to assert her right to the suit property and seek orders that she feels will protect her interests in the said suit. Indeed a civil suit would probably be the best route in the circumstances of this matter so that the issue of who is supposed to own the property is determined once and for all.

9. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 2nd day of February 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT AT NAKURU

In presence of :-

Mr. D M Gatonye holding brief for Ms. Elizabeth

Omwenyo for applicant

CA: Janet

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT AT NAKURU