



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

MISC ELC JR NO. 1 OF 2016

IN THE MATTER OF AN APPLICATION BY BEATRICE WAMBUI WARUI FOR LEAVE

TO APPLY FOR PREROGATIVE ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF ARTICLE 23(3) (F) OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF SECTIONS 8 & 9 OF THE LAW REFORM ACT CAP 20 LAWS OF KENYA

AND

IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES 2010

AND

IN THE MATTER OF THE MAGISTRATE'S COURTS ACT CAP 10

AND

IN THE MATTER OF KERUGOYA CHIEF MAGISTRATE'S COURT CIVIL SUIT NO. 75 OF 2016

AND

IN THE MATTER OF

BEATRICE WAMBUI WARUI.....APPLICANT

VERSUS

HON. ATTORNEY GENERAL OF KENYA.....1ST RESPONDENT

KERUGOYA CHIEF MAGISTRATE.....2ND RESPONDENT

RULING

The Ex-parte applicant herein **BEATRICE WAMBUI WARUI** has moved the Court under certificate of urgency seeking the following orders:-

1. Spent.

2. That this Honourable Court be pleased to grant the applicant leave to move this Court by a motion and apply for

a. An order of certiorari to remove into this Honourable Court and to quash the order of temporary injunction by the 2nd respondent granted on 31st March 2016 and issued on 1st April 2016 in Kerugoya Chief Magistrate Civil Suit No. 75 of 2016.

b. An order of prohibition restraining the 2nd respondent herein from proceeding with the hearing and determination of Kerugoya Chief Magistrate Civil Suit No. 75 of 2016.

3. That the grant of leave do operate as a stay of any reliance, use, implementing, enforcing and/or further proceedings in respect of the order granted by the 2nd respondent on 31st March 2016 and issued on 1st April 2016 in Kerugoya Chief Magistrate Civil Suit No. 75 of 2016.

4. Costs of this application.

The application which is founded on the statutory statement annexed thereto was argued orally by the counsel Mr. Omenya.

The gist of the application is that whereas the applicant is the registered proprietor of land parcels number KIINE/SAGANA/699 and KIINE/SAGANA/2284 (the suit property) situated along the Nairobi-Nyeri Highway at Sagana and whose value is approximately Kenya Shillings Sixty Six Million (Ksh. 66,000,000), the 2nd respondent, acting ultra vires, has proceeded to grant a temporary injunction against the applicant and the 3rd respondent has hastily registered the said order at the Lands Registry thus prohibiting the applicant from freely dealing with the said suit property which is contrary to the provisions of **Section 25 of the Land Registration Act 2012.**

I have considered the application and the main issue being raised herein is that the 2nd respondent is acting in excess of jurisdiction in view of the claim that the value of the suit property is Ksh. 66,000,000 and more fundamentally in view of the order of stay granted in Malindi Constitutional Petition No. 3 of 2016. Although counsel has not availed the orders issued by Malindi High Court Constitutional Petition No. 3 of 2016 – **MALINDI LAW SOCIETY VS ATTORNEY GENERAL & ANOTHER**, this Court is aware that certain orders were issued by that Court suspending the implementation of various amendments touching on the **Environment and Land Court Act**, the **Magistrate's Court Act** among others. I need not delve into those amendments at this stage.

At this point, what is important is that the issue of the jurisdiction of the Chief Magistrate to handle Kerugoya Chief Magistrate's Court Civil Case No. 75 of 2016 has been put into question. The jurisdiction of a Court in handling disputes before it is an important issue and lack of it would lead to the quashing of any decision made by such Court. There is also a suggestion that Chief Magistrate may have acted on the basis of a law that is suspended. Those are weighty issues.

Prima facie, therefore, and upon consideration of all the matters herein I am satisfied that the applicant is entitled to the orders sought in her Chamber Summons dated 6th April 2016. I allow it in the following terms:-

1. Leave is granted.

2. The applicant to file and serve the substantive Notice of Motion within 21 days from the date hereof. Same be served upon the respondents and all other interested parties.

3. The leave shall operate as a stay of any further proceedings in Kerugoya Chief Magistrate's Civil Suit No. 75 of 2016.

4. The injunctive orders issued by the Chief Magistrate in Kerugoya Chief Magistrates Civil Case No. 75 of 2016 shall however remain in force until further orders of this Court.

5. Costs in the cause.

B.N. OLAO

JUDGE

8TH APRIL, 2016

Ruling delivered in open Court this 8th day of April 2016

Mr. Omenya for Applicant present.

B.N. OLAO

JUDGE

8TH APRIL, 2016