



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC PETITION NO. 5 OF 2015

IN THE MATTER OF: ARTICLE 22 AND 23 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS OR FUNDAMENTAL FREEDOMS UNDER ARTICLES 22, 40, 47 & 50 OF THE CONSTITUTION

IN THE MATTER OF: JUDICIAL REVIEW BY WAY OF MANDAMAS AGAINST THE RESPONDENTS JOINTLY AND SEVERALLY

BETWEEN

1. SAMSON KALUME CHARO

2. JUMA CHARO MWANGIRANI (*both being legal representatives of the late*

CHARO MWANGIRANI (DECEASED).....PETITIONERS

AND

1. THE LAND REGISTRAR, KILIFI

2. MICHAEL CHINYAKA

3. THE ATTORNEY GENERAL.....RESPONDENTS

J U D G M E N T

1. In their Petition dated 22nd May, 2015, the Petitioners have averred that they are the Administrators ad litem of the Estate of the late Charo Mwangirani, the registered proprietor of plot number Ngumo Pasta Mazerias/1117 (the suit property).

2. According to the Petitioners, the late Mr. Charo had subdivided the suit property and presented the documents to the 1st and 2nd Respondents for registration; that the 1st and 2nd Respondents have refused to register the subdivisions without any valid reason and that they have been denied the right to use their land.

3. The Petitioners have prayed for an order of Judicial Review by way of mandamus to compel the 1st and

- 2nd Respondents to register the Petitioners subdivisions of plot No. Ngumo Pasta Mazeras/1117 and issue the Title Deeds; an order for Judicial Review by way of mandamus to compel the 1st and 2nd Respondents to release all the subdivided plots and for the costs of the Petition.
4. In response, the Land Registrar, Kilifi, deponed that his office was served with court orders arising from the Resident Magistrates court at Kiilfi in Civil Case No. 268 of 2011; that that suit is still pending and that because of those orders, he could not register the mutation documents.
5. In his Supplementary Affidavit, the 2nd Petitioner deponed that there is no order stopping the registration of the subdivision and that in any event, the orders which were in place lapsed and were discharged by the court.
6. It is the Petitioners deposition that there are numerous people in occupation of the suit property and the failure to register the subdivisions has made it difficult for them to proceed with the proper administration of the Estate of the deceased and that the pendency of a suit is not a bar to them in dealing with the suit property.
7. The Petitioners' advocate filed brief written submissions in which he reiterated the petitioners depositions. The Attorney General, on behalf of the Respondents did not file any submissions.
8. The Petitioners are praying that this court compels the Respondents by way of an order of mandamus to register the subdivisions in respect of parcel of land known as Ngumo Pasta Mazeras/1117 and issue them with Title Deeds.
9. The evidence before me shows that the late Charo Mwangirani Mwakoba is the registered proprietor of the suit property.
10. Before his demise on 13th October, 2010, the deceased had caused the suit property to be subdivided by Mr. Edward J. Kiguru, a registered licenced surveyor. The mutation forms showing the subdivisions of the suit property have been annexed on the Petitioners' Affidavit.
11. It will appear that the mutation forms was indeed received by the then District Land Registrar on 30th September, 2008 and the same were to be registered and Title Deeds issued in the name of the deceased.
12. The 2nd Respondent's defence is that he could not register the Mutation forms and issue the Title Deeds for the subdivisions of the suit property because of the order of the court that was served on him.
13. The 2nd Respondent has however admitted in his affidavit that currently, there is no order barring him from registering the mutation and issuing Title Deeds for the respective subdivisions.
14. It is true that initially, there was an order of the court in Kilifi SPMCC No. 268 of 2011 inhibiting the registration of any dealing in parcel of land number Ngumo Patse/Mazeras/1117.
15. However, and as currently admitted by the 2nd Respondent, that order was vacated by the court on 17th November, 2011.
16. In the absence of an order of the court inhibiting the registration of the mutation and issuing of the Title Deeds in respect of the subdivisions, the Respondents are under a statutory duty to register the mutation that has been annexed on the Petition and issue Title Deeds for the subdivisions in the name of the deceased.
17. For those reasons, I allow the Petition in the following terms:-

(a) An order of Judicial Review by way of Mandamus be and is hereby issued compelling the

1st and 2nd Respondents to register the mutation for the subdivision of parcel of land number Ngumo Pasta Mazerus/1117 and to issue the Title Deeds in the name of the deceased or the Administrators of the Estate of the deceased for distribution.

(b) An order of Judicial Review by way of Mandamus be and is hereby issued compelling the 1st and 2nd Respondents to release all the Title Deeds arising out of the sub-divisions of parcel of land known as Ngumo Pasta Mazerus/1117 to the Petitioners

(c) The Respondents to pay the costs of the Petition.

Dated, signed and delivered in Malindi this **16th** day of **September**, 2016.

O. A. Angote

Judge