



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

JUDICIAL REVIEW MISC. APP NO. 9 OF 2016

JUDITH AKINYI OMONDI.....EX-PARTE APPLICANT

VERSUS

THE SENIOR RESIDENT MAGISTRATE

(WINAM LAW COURT).....1ST RESPONDENT

THE IN-CHARGE ADMINISTRATION POLICE

(WINAM DIVISION).....2ND RESPONDENT

MAURICE ODAWO ONDURU.....3RD RESPONDENT

RULING

1. **Judith Akinyi Omondi**, the Exparte Applicant, moved the court through the chamber summons dated 26th September 2016 under **Order 53** of the Civil Procedure Rules seeking for leave to apply for an order of certiorari in respect of Winam SRMC Misc. Civil App. No.32 of 2016, prohibition order, an order that leave do operate as stay and costs. The prayer for leave was granted exparte on the 28th September 2016 when the court directed that the application be served for hearing on the prayer whether leave granted will operate as stay.

2. **The Senior Resident Magistrate (Winam Law Court), The Incharge Administration Police (Winam Division), and Maurice Odawo Onduru** are named as the 1st to 3rd Respondent and were duly served and affidavit of service sworn by Kennedy N. Nyasimi, sworn on 9th October 2016 filed. The 3rd Respondent opposed the application through the replying affidavit sworn by Maurice Odawo Onduru on unspecified date but filed in court on 12th October 2016.

3. The application came up for hearing on 31st October 2016 when Mr Nyasimi and Mr Onyango, learned counsel for the Exparte Applicant and 3rd Respondent made their verbal submission.

4. The issue for determination is whether the Exparte Applicant has established reasonable basis for issuance of stay orders.

5. The court has considered the grounds on the statutory statement, the verifying and replying affidavits, rival verbal submissions and come to the following findings;

a) That though the 3rd Respondent may be the registered proprietor of the suit land in view of the documentary evidence availed, it is clear that the Exparte Applicant uses a portion of the said land as confirmed by the 3rd Respondent at paragraph 10 of the replying affidavit and the nature of the charge of forcible detainer that she is facing in the criminal case.

b) That the fears of the Exparte Applicant that she may be evicted through the orders issued in **Winam SRM Misc. Civil Appl.NO.32 of 2016** on 15th September 2016, in which she was not accorded an opportunity to be heard, cannot be said to be farfetched or too remote to make her concerned.

c) That the existence of **Winam SRM Cr.Case No.561 of 2016**, in which the Exparte Applicant and the 3rd Respondent are the Accused and Complainant respectively, on a charge of forcible detainer contrary to **Section 94 of Penal Code**, in relation to land parcel 29978 which is the suit land herein, goes to reinforcing the Exparte Applicant's fears that the orders of 15th September 2016 were meant to among others, have her evicted.

d) That even though the 3rd Respondent's response is that the orders of 15th September 2016 do not confer ownership of land to any party, the court cannot fail to note that the purpose of seeking police protection is on the realization that the exercise of leveling of the land would likely meet opposition from some person(s), who unfortunately have not been enjoined as parties in the application and therefore have not been accorded the opportunity to be heard.

e) That the leveling of the land parcel 29978 has not been defined or specified in the order in question to exclude the Exparte Applicant's houses and the Exparte Applicants fears are that it may involve demolishing her developments on the said land without being accorded a hearing.

f) That having found as above, the court is satisfied that the leave granted to file the substantive application for certiorari, and prohibition should operate as stay of implementation of the order issued by the 1st Respondent on 15th September 2016 in **Winam SRMC Misc. Civil Appl. NO.32 of 2016** as prayed in prayer 3 and it is so ordered. That the costs will abide the outcome of the substantive application to be filed pursuant to the orders of 28th September 2016.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 9TH DAY OF NOVEMBER 2016

In presence of;

Exparte Applicant Absent

Respondents Absent

Counsel Mr. Kauko for Onyango for 3rd Respondent.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

9/11/2016

9/11/2016

S.M. Kibunja Judge

Oyugi Court Assistant

Parties absent

Mr Kouko for Onyango Charles for Respondents

Court: Ruling dated and delivered in open court in presence of Mr. Kouko for Onyango for Respondents.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

9/11/2016