



REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT OF KENYA

AT MALINDI

J.R MISC. APP. NO.14 OF 2011

**ANTIOCHIA
LIMITED.....EX PARTE
APPLICANT**

=VERSUS=

1. THE COMMISSIONER OF LANDS

2.THE CHIEF LAND REGISTRAR

**3. THE KILIFI LAND
REGISTRAR.....RESPONDENTS**

=AND=

1.FIEDELITY EXPORT & IMPORT LIMITED

**2. NEEMA ALI
MRAMBA.....INTERESTED
PARTIES**

R U L I N G

Introduction

1. What is before me is the Application by the Interested Parties dated 4th December 2013. The Application is filed pursuant to the provision of section 179 of the Evidence Act, Section 3A and 63(3) of the Civil Procedure Act seeking for the following orders:

(a) That this Honorable Court be pleased to issue an Order directing and/or compelling the Regional coordinator, National Registration of persons Mombasa to Supply the interested parties with particulars for verification of the Registration of the following persons FARUK SWALEH I/D No.5477099, Baya Kadenge and Joyce Chome I/D NO. 1069097.

The Applicant's case:

2. The Application is supported by the Affidavit of Neema Ali Mramba, the 2nd Interested Party,

who has deponed that he was enjoined in this suit on the basis that he sold the suit property to the 1st Interested Party; that on perusal of the pleadings on record, he learnt that the Plaintiff bought the suit property from Faruk Swaleh, Baya Kedenge and Joyce Cidi Chome and that since the suit is meant to establish the validity of the two titles issued over the same parcel of land, it would be just and fair to have the identities of the alleged vendors produced in court.

3. It is the Applicant's further deposition that when he requested for details of the vendors from the Regional Co-ordinator, National Registration of Persons, the said Regional coordinator requested for a court order before he could release the information to the Interested Party.

The *Ex-parte* Applicant's/Respondent's case:

4. The *Ex-parte* Applicant's/Respondent's advocate filed his Grounds of Opposition and averred that the reliefs sought by the Interested Parties/Applicants are not amenable and grantable in Judicial Review Proceedings; that the orders are being sought against a person who is not a party to this suit; that the Applicant is requesting the court to vouch for evidence in favour of the Interested Parties in an adversarial system and that the Application is meant to delay the expeditious disposal of the Judicial Review Application.
5. The parties filed their respective submissions which I have considered.

Analysis and findings

6. The *Ex-parte* Applicant's main Motion filed on 24th May 2011 is seeking for the judicial review orders of Mandamus directed to the Respondent to cancel the leasehold interest or title of parcel of land number Chembe/Kibabamshe/409 which was granted to the 2nd Interested Party on 1st September 2010 and then transferred to the 1st Interested Party on 28th April 2011.
7. On the other hand, the Interested Parties are seeking for orders to compel the Regional Co-ordinator, National Registration of Persons to supply to the Interested Parties with particulars of Faruk Swaleh, Baya Kadenge and Joyce Chome to enable them use those particulars to oppose the main Motion.
8. Order 53 of the Civil Procedure Rules provides the procedure that should be followed when one is seeking for prerogative orders of Mandamus, Certiorari and Prohibition.
9. The law governing Judicial Review Proceedings is the Law Reform Act and Order 53 of the Civil Procedure Rules. As has been held in a long chain of decisions, Judicial Review is an exclusive and specific jurisdiction which the court exercises *sui generis*. That jurisdiction is neither civil nor criminal.
10. Once served with the substantive Motion, the Respondents or Interested Parties can only file affidavits stating the reasons why the prerogative orders should not issue. Order 53 of the Civil Procedure Rules and the Law Reform Act do not contemplate a situation where in response to the main Motion, a party chooses to file an Application to be furnished with better particulars. The Interested Parties cannot invoke the Civil Procedure jurisdiction to compel the Registrar of Persons to give them information to use in their defence.
11. It may be true, as argued by the Interested Parties, that the information held by the Registrar of Persons is crucial in their defence. However, the Applicant has not informed this court the provisions that he is invoking under the Law Reform Act and Order 53 of the Civil Procedure Rules to be granted the orders being sought.
12. The way the Application is framed is to direct the Registrar of Persons, who is not a party to these proceedings, to give particular information to the Interested Parties. The order being sought against the Registrar of Persons is of compulsion in nature. It is an order of Mandamus within the main Motion and it is supposed to be issued against a person who is not a party to the suit.
13. In the absence of a separate Application by the Interested Parties for an order of Mandamus, in which the leave of the court should have been obtained, and considering that the Registrar of persons is not a party to the proceedings, I find that the Application dated 4th December 2013 is unmeritorious. The Application is therefore dismissed with costs.

Dated and delivered in Malindi this 28th Day of March, 2014

O. A. Angote

Judge