



Republic v County Land Registrar - Nyandarua; Bussy Holding Ltd & 2 others (Exparte Applicants) (Environment and Land Judicial Review Case E001 of 2024) [2024] KEELC 4310 (KLR) (23 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4310 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 OF 2024**

YM ANGIMA, J

MAY 23, 2024

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY LAND REGISTRAR - NYANDARUA RESPONDENT

AND

BUSSY HOLDING LTD EXPARTE APPLICANT

GRACE NJERI MWANGI EXPARTE APPLICANT

JACINTA WAMBUI EXPARTE APPLICANT

RULING

1. Vide a notice of motion dated 14.02.2024 expressed to be based upon Order 53 rule 1(2) of the [Civil Procedure Rules, 2010](#), and all other enabling provisions of the law, the Applicants sought leave of court to apply for an order of *mandamus* directed against the Land Registrar – Nyandarua County (the registrar) compelling him to register them as proprietors of Title Nos. Ol’Kalou Township Block 1/287, 288, 291 – 298 (the suit properties) as directed by the Cabinet Secretary, Ministry of Lands and Physical Planning (the CS).
2. The application was based upon the statutory statement and verifying affidavits of even date together with the annexures thereto. The Applicants pleaded that on diverse dates between 1994 and 1996 they were allocated the suit properties by the office of the then Commissioner of Lands (Commissioner). They further pleaded that they duly fulfilled all the required conditions of allotment and were issued with lease documents duly signed and stamped for registration by the registrar. It was contended that despite request by the CS – the registrar had refused, failed or neglected to comply without any lawful



justification. It was also the Applicants' contention that no other legal remedy was available to them in the circumstances hence the application for leave to apply for judicial review orders.

3. The court has considered the said application together with the accompanying statutory statement and verifying affidavit. The court is alive to the fact that an application for leave is usually heard and determined *ex parte*. The test to be applied in either granting or declining such leave was considered by Waki J (as he then was) in the case of Republic v County Council of Kwale & another Ex-Parte Kondo & 57 others [1998] IKLR (E&L) 304 as hereunder:

“Leave may only be granted if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the Applicant the test being whether there is a case fit for further investigation at a full inter parties hearing on the substantive application for Judicial Review. It is an exercise of the court's discretion but as always has to be exercised judicially...”

4. The court has noted that although the Applicants contended that they had complied with the terms and conditions of allotment by the Commissioner, there is no evidence on record to demonstrate such compliance even on a *prima facie* basis. For instance, there is no evidence on record to show acceptance of the offers by the Commissioner. There is also no evidence to demonstrate payment of the stand premium and other charges indicated in the letters of allotment within the period of 30 days or at all as communicated by the Commissioner. The court is of the view that exhibiting letters of allotment by itself does not necessarily demonstrate compliance with its terms and conditions.
5. There is a curious aspect to the Applicant's application for leave to apply for judicial review. They pleaded that although the CS had forwarded their leases to the registrar for registration, the latter had refused to comply with the directive of his superior hence there was no other legal remedy available to vindicate their property rights. It is incredible that the CS would issue a lawful directive to his subordinate which is not complied with and he is left without any recourse. The court refuses to accept that there are no administrative remedies which the CS could employ to secure compliance with his directive.
6. The court is of the view that what the Applicants may have encountered are merely administrative inefficiencies within the Ministry of Lands hence the same ought not to be laid at the doorstep of the Judiciary. The material on record shows that it took about 28 years to process the Applicant's allotment letters. The Applicants are better off completing the process of registration of their leases through the administrative means available in the Ministry. As a result, the court is not inclined to grant the leave sought to apply for judicial review orders against the registrar.
7. The upshot of the foregoing is that the court is not satisfied that the Applicants have made out a case for the grant of the leave sought to apply for judicial review. As a result, the Applicants' notice of motion dated 14.02.2024 is hereby declined with no order as to costs.

Orders accordingly.

RULING DATED AND SIGNED AT NYANDARUA THIS 23RD DAY OF MAY, 2024 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

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Y. M. ANGIMA

JUDGE

In the presence of:



Mr. Ndolo for the Ex Parte Applicants

N/A for the Respondent

C/A - Carol

