



Republic v Land Registrar, Nakuru; Ngigi (Exparte Applicant) (Judicial Review Application E003 of 2023) [2024] KEELC 3931 (KLR) (20 May 2024) (Ruling)

Neutral citation: [2024] KEELC 3931 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
JUDICIAL REVIEW APPLICATION E003 OF 2023**

**MAO ODENY, J
MAY 20, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

LAND REGISTRAR, NAKURU RESPONDENT

AND

PETER GITIYA NGIGI EXPARTE APPLICANT

RULING

1. This ruling is in respect of a Notice of Motion dated 21st March, 2023 seeking the following orders:
 - a. That this Honourable court do hereby grant the subject an order of Mandamus by way of judicial review by compelling the Land Registrar, Nakuru to:
 - a. Issue the Subject with Certificates of official search in respect of all the subdivisions arising from Kiambogo/Kiambogo Block 2/468 (Mwariki).
 - b. Issue the Subject with a certified copy of green card in respect to parcel of land known as Kiambogo/Kiambogo Block 2/62 (Mwariki)
 - b. That the costs of this application be borne by the Respondent.
2. On 17th March 2023 the court granted leave to the *ex parte* Applicant to file the substantive judicial review application within 21 days which was duly filed.
3. The application was premised on the grounds enumerated on the face of the motion and supported by the affidavit of Peter Gitiya Ngigi, dated 9th March, 2023 who deponed that he is the legal administrator of the estate of Ngigi Kimani Kibiku (deceased) who was the registered owner of land known as Kiambogo/Kiambogo Block 2/468 (Mwariki) and Kiambogo/Kiambogo Block 2/62 (Mwariki).



4. He further stated that on or around the year 2020 and while in the process of seeking to distribute the said estate, he started noticing ongoing constructions on the parcel of land Kiambogo/Kiambogo Block 2/468 (Mwariki) and found out that the parcel had been subdivided into almost 74 portions.
5. It was his averment that he then applied for certificates of official search arising from the subdivisions and a certified copy of the green card in respect of parcel of land Kiambogo/Kiambogo Block 2/62 (Mwariki) but despite the said applications having been lodged, the Respondent has to-date failed, refused and/or neglected to issue him with certificates of official search and green cards in respect of the parcels of land.
6. The Respondent opposed the application *vide* a Replying Affidavit dated 30th August, 2023 stating that he has not failed and/or refused to issue the *ex parte* Applicant with certificates of official search in respect of all the subdivisions arising from Kiambogo/Kiambogo Block 2/468 (Mwariki) as the Applicant has failed to collect the certificate of official searches in respect of the suit parcels of land.
7. The *ex parte* Applicant filed a further affidavit dated 19th September, 2023 after being served with the Respondent's replying affidavit dated 30th August, 2023 and upon visiting the lands office, he was still directed to wait as the same cannot be generated. He deposed that if indeed the certificate is available for collection, nothing stopped the Respondent from attaching it on the replying affidavit.
8. It was his evidence that the parcel of land Kiambogo/Kiambogo Block 2/62 (Mwariki) was charged with Kenya Commercial Bank and at the time of the charge, a search was conducted and the same was still registered in the name of the deceased (Ngigi Kimani Kibiku).
9. The application was canvassed by way of written submissions whereby the respondent did not file any.

Ex Parte Applicant's Submissions.

10. Counsel reiterated the contents of the supporting affidavit and relied on Section 7 (1) and (2) of the *Land Registration Act*, and the cases of *Asili Housing Cooperative Society Ltd v District Land Registrar, Kajiado South and Central* [2021], *Kingdom Kenya 01 Limited V The District Land Registrar, Narok & 15 others* [2018] eKLR and *Wainaina Kigathi Mungai v Land Registrar Kilifi & Another* [2017] and urged the court to grant the orders as prayed

Analysis And Determination

11. The issue for determination is whether the *ex parte* Applicant is entitled to the orders sought. Section 9 (1) of the *Land Registration Act* 2012 mandates the Land Registrar to maintain the register and any document required to be kept in a secure, accessible and reliable format.
12. Section 10 of the *Land Registration Act* 2012 provides as follows:

“Subject to *Constitution* and any other law regarding freedom of and access to information, the Registrar shall make information in the register accessible to the public by electronic means or any other means as the Chief Land Registrar may reasonably prescribe.”
13. In the case of *Esther Kabugi Njuguna –vs Martha Chebet & 3 others* [2020] eKLR the court stated that:

“The Lands Registrar is the custodian of all land records and is expected to have custody of all copies of registered instruments and when such are not available questions of complicity on the part of the officer are bound to arise.”



14. It should be noted that the Respondent stated in his replying affidavit that he has not failed and/or refused to issue the Applicant with certificates of official search in respect of all the subdivisions arising from the suit property but that the Applicant is the one who has failed to collect the certificate of official searches.
15. The Applicant filed a further affidavit after the response by the respondent stating that he went to collect the searched but he was not issued with the same. This shows that the Respondent has admitted that he has not issued the requisite official searches, is playing hide, and seek with the Applicant. If it is true that it is the Applicant who has failed to collect the certificates, then why did the Respondent not issue them when the Applicant went to collect them?
16. The court is left with no option but to grant the application as prayed. I therefore issue the following orders
 - a. The Land Registrar Nakuru is hereby ordered to issue to the *ex parte* Applicant Certificates of official search in respect of all the subdivisions arising from Kiambogo/Kiambogo Block 2/468 (Mwariki) within 7 days from the date hereof.
 - b. The Land Registrar Nakuru is hereby ordered to issue the *ex parte* Applicant with a certified copy of green card in respect of parcel of land known as Kiambogo/Kiambogo Block 2/62 (Mwariki) within 7 days from the date hereof.
 - c. The costs of this application shall be borne by the Respondent.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 20TH DAY OF MAY 2024.

M. A. ODENY

JUDGE

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure.

