



Nyadiga v District Land Registrar Homa Bay County & another (Miscellaneous Cause E008 of 2024) [2024] KEELC 5680 (KLR) (25 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5680 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
MISCELLANEOUS CAUSE E008 OF 2024
GMA ONGONDO, J
JULY 25, 2024
IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW
ORDERS OF CERTIORARI AND PROHIBITION.
IN THE MATTER OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA,
FAIR ADMINISTRATION ACTION ACT 2015
AND
THE LAND REGISTRATION ACT 2016 (2012)

BETWEEN

JANE ATIENO NYADIGA EXPARTE APPLICANT

AND

DISTRICT LAND REGISTRAR HOMA BAY COUNTY 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. By a notice of motion application dated 2nd June 2024, the *ex parte* applicant, Jane Atieno Nyandiga through Phiona Ogoi and Company Advocates has sought the following orders;
 - a. That the *ex parte* applicant be granted leave to apply for Judicial Review for the following orders;
 - i. Prohibition prohibiting the Respondent herein from cancelling the *Ex-parte* Applicants title deed in respect to land parcel Kanyada/Kanyada/Kanyala/456 as contained in the respondent’s letter addressed to the *ex-parte* applicant.



- ii. *Certiorari* to move this Honourable Court to quashed the proceedings, findings and/ or decisions of the Respondent in respect to land parcels No. Kanyada/Kanyada/ Kalanya/456.
 - iii. That the so leave granted operate as a stay of proceedings in the magistrates Court ELC No. 17 of 2024 against the respondent and 2 others.
 - b. That the Respondent herein be ordered to pay the costs of the Application.
 2. The application is founded upon the ex parte applicant's statutory statement, verifying affidavit, draft notice of motion for Judicial Review and annexed documents which include; title deed in respect of land reference number Kanyada/Kanyango/Kalanya/456 and the 1st respondent's letter dated 28th March 2024. It is also based on the grounds stated on it's face namely;
 - a) The applicant is the registered owner of parcel number Kanyada/Kanyada/Kalanya/456.
 - b) That the respondent lacks the necessary legal capacity and jurisdiction to cancel the said title deeds.
 - c) The respondent contravened the rules of natural justice by condemning the *ex-parte* applicant unheard and failing to supply him with copies of proceedings.
 - d) Thus, the actions of the respondent were improper, irregular, procedural, unreasonable and irrational, hence the decision made thereof was illegal and unreasonable.
 - e) That the Court be pleased to grant leave for hearing of the Judicial Review Application.
 3. Ms Juma learned counsel for the respondents has no objection to the 2nd prayer sought in the application.
 4. In that regard, the application is steadfast and meritorious.
 5. Thus, the application is hereby allowed in terms of leave to apply for orders of *Certiorari*, Prohibition and the same leave to operate as stay as captured in the 2nd prayer in the application as stated at paragraph 1 (a) (i) (ii) and (iii) hereinabove.
 6. The *ex parte* applicant's counsel to file and serve the prospective substantive application within the next 21 days from this date.
 7. Mention on 16th October 2024 to confirm compliance.
 8. Costs of the application to abide the outcome of the prospective substantive application.
- Orders accordingly.

DATED AND DELIVERED AT HOMA BAY THIS 25TH DAY OF JULY 2024.

GEORGE M A ONG'ONDO

JUDGE

PRESENT;

1. Mr. M Migele instructed by Ms. Phiona Amondi learned counsel for the ex Parte applicant
2. Ms. Sarah Juma learned counsel for the respondents
3. Mr. T. Luanga court assistant.

