



Gichuki v District Land Registrar - Thika (Miscellaneous Application E001 of 2024) [2024] KEELC 5834 (KLR) (15 August 2024) (Ruling)

Neutral citation: [2024] KEELC 5834 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
MISCELLANEOUS APPLICATION E001 OF 2024**

**BM EBOSO, J
AUGUST 15, 2024**

BETWEEN

JOHN KIHICO GICHUKI APPLICANT

AND

DISTRICT LAND REGISTRAR - THIKA RESPONDENT

RULING

1. Falling for determination in this ruling is the chamber summons application dated 5/2/2024, brought by John Kihiko Gichuki [the exparte applicant]. Through the application, the exparte applicant seeks an order of mandamus to compel the District Land Registrar - Thika to issue a duly signed Certificate of Title to the exparte applicant in respect of Land Parcel Number Thika Municipality Block 20/1688 [hereinafter referred to as “the suit land.”] The application is premised on the grounds outlined in the exparte applicant’s supporting affidavit sworn on 5/2/2024 and his statutory statement of facts dated 5/2/2024.
2. The case of the applicant is that, he bought three plots from Ngoingwa Company Ltd, namely, M761, M762 and M763. Ngoingwa Company Ltd processed titles to the three plots surveyed as Land Parcel Numbers Thika Municipality/Block 20/1686, 1687 and 1688. The applicant contends that upon collection of the aforementioned title deeds from M/s Ngoingwa Company Ltd, he noticed that the title deed relating to the suit land did not bear the District Land Registrar’s signature. The exparte applicant further contends that he returned the unsigned title deed to Ngoingwa Company Ltd, who in turn forwarded it to Thika Land Registry, requesting that they be issued with a signed title deed. It is the exparte applicant’s case that he has visited the Thika Land Registry severally requesting to be issued with a duly signed title deed, but he has not been successful to date. The ex-parte applicant contends that the Land Registrar informed him that he would only issue him with a new title deed upon being compelled through a court order. He adds that the Land Registrar - Thika is under a public duty to issue a duly signed title deed to him but he is unlawfully neglecting or refusing to do so. He contends



that the Land Registrar -Thika has acted and is continuing to act in excess of his powers in refusing to carry out his public duties.

3. I have considered the application, the grounds listed in the statement and in the supporting affidavit sworn by the exparte applicant. I have also considered the relevant legal frameworks and jurisprudence. The issue to be determined in the application is whether the applicant has satisfied the criteria upon which leave to institute judicial review proceedings is granted.
4. It is a requirement of the law under Order 53 rule 1 of the Civil Procedure Rules 2010, that an applicant must seek leave to institute judicial review proceedings. Leave is meant to eliminate, at an early stage, any applications for judicial review which are either frivolous, vexatious or hopeless, to ensure that the applicant is only allowed to proceed to a substantive hearing if the court is satisfied that there is a case fit for further consideration; to prevent unnecessary wastage of the time of the court. The rationale for leave was discussed in the case of Republic v County Council of Kwale & another ex parte Kondo & 57 others, Mombasa HCMCA No. 384 of 1996. The court in the aforementioned case held that 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 sought by the applicant; the test being whether there is a case fit for further investigation at a full inter partes hearing of the substantive application for judicial review. Granting of leave to file a judicial review motion is an exercise of discretion, but the discretion has to be exercised judiciously.
5. In Republic v National Transport & Safety Authority & 10 others [2014] eKLR, the court held that in judicial review, the threshold for obtaining leave to commence is low and obtaining leave is not in itself evidence of a strong case. In order to obtain leave to commence judicial review proceedings, an applicant only needs to show that he has an arguable case.
6. In the present application, it is alleged that an unsigned “title deed” was issued to the applicant by Ngoingwa Company Limited. The said company is, however, not a party to the present proceedings to tell the court where they got the unsigned document from and why they did nothing about the anomaly at the time of procuring the unsigned document.
7. Secondly, the issue that has emerged is not merely a question of failure of the Land Registrar to perform a public duty. There are more questions such as:
 - (i) Where did Ngoingwa Company Ltd get the unsigned document from?
 - (ii) Why did they elect to keep quiet?
 - (iii) If they were the ones processing titles in their subdivision scheme, why haven’t they processed a proper title in favour of the exparte applicant?
8. For the above reasons, the court takes the view that a judicial review motion is not an efficacious platform on which to ventilate this claim. This is a claim to be efficaciously ventilated on the platform of an ordinary civil suit that avails to the parties the opportunity to lead viva voce evidence. The ordinary suit is one initiated by way of a plaint. Inevitably, Ngoingwa Company Limited will have to be made a party to the ordinary civil suit. There is no gainsaying that the door to the seat of justice is wide open.
9. In the end, the plea for leave to initiate judicial review proceedings is declined. There will be no order as to costs. This file shall be marked “case closed”.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 15TH DAY OF AUGUST 2024

B M EBOSO



JUDGE

In the Presence of: -

Ms Muiruri for the Ex-parte Applicant

Court Assistant: Melita

