



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MERU

J.R NO. '45' OF 2010

FREDRICK GATOBU EX-PARTE APPLICANT

VERSUS

THE CHAIRMAN IMENTI SOUTH DISTRICT

LAND DISPUTES TRIBUNAL.....RESPONDENT

PETER MUNGIRIA

SILAS MUTUTA MUNGIRIA.....INTERESTED PARTIES

RULING

BACKGROUND

The application before me is the Notice of Motion dated 12 April, 2018 brought under Section 1A, 1B and 3A CPA, Order 51 Rule 1, Section 31, 80 of the Land Registration Act No. 3 of 2012 and all enabling provisions of the law. The application which is brought under Certificate of Urgency seeks the following orders;

1) Spent

2) THAT the Honorable court be pleased to order the interested parties PETER MUNGIRIA, SILAS MUTUTA, STANLEY KIMATHI MUNGIRIA and ELPHAS KINOTI MUNGIRIA to re-transfer the parcel of L.R. NO. NKUENE/TAITA/1557 to the Exparte Applicant FREDRICK GATOBU.

3) THAT this Honorable court be pleased to order the interested parties PETER MUNGIRIA, SILAS MUTUTA, Stanley Kimathi Mungira and ELPHAS KINOTI MUNGIRIA to surrender and sign all necessary transfer documents, their National Identity Cards, PIN Numbers and Passport size photographs to facilitate the re-transfer of L.R NO. NKUENCE/TAITA/1557 to the ex-parte applicant FREDRICK GATOBU and in default, the District Land Registrar Meru be ordered to dispend with the production of the said documents.

4) THAT this Honorable court be pleased to order the Executive Officer of this Honorable court to sign the transfer documents on behalf of the interested parties to facilitate the re-transfer of L.R. NO. NKUENE/TAITA/1557 by cancelling and amending the Registration of the 3rd and 4th Interested parties STANLEY KIMATHI MUNGIRA and ELPHAS KINOTI MUNGIRA as proprietors and register the land under the names of the ex-parte applicant FREDRICK GATOBU.

5) THAT this Honorable court be pleased to order the rectification of the Register of the L.R. NO. NKUENE/TAITA/1557 by cancelling and amending the registration of the 3rd and 4th interested parties STANLEY KIMATHI MUNGIRA and ELPHAS KINOTI MUNGIRA as proprietors and register the land under the name of the Ex-parte Applicant FREDRICK GATOBU.

6) THAT this Honorable court be pleased to make such further orders as may be necessary to meet the ends of Justice.

7) THAT the costs of this application be paid by the Interested Parties.

That application is supported by the affidavit of the Ex-parte applicant and grounds apparent on the face of the application.

The applicant has attached numerous documents to the supporting affidavit including the judgment of this Honorable court in respect of this Judicial Review Case delivered on 8/2/2018. The applicant also attached a copy of the original Title Deed issued to him on 6th day of March 2002.

Also attached to the Supporting Affidavit is a copy of green card showing that the suit property has been subdivided and titles issued to the interested parties after a restriction was filed on 24/6/2010. In that affidavit in support of this application, the applicant stated that he is the registered owner of the suit property No. NKUENE/TAITA/1557. Upon filing this Judicial Review proceedings, the interested parties instructed the firm of Elijah Ogoti & Co. Advocates to act on their behalf.

During the pendency of this Judicial Review case, the interested parties fraudulently transferred the suit property to the 3rd and 4th interested parties despite inhibition orders placed therein. The applicant contend that the interested parties committed serious acts of fraud since the court order had been issued staying all proceedings regarding the implementation of proceedings in LDT No. 45 of 2002 and No. 70 of 2009 (Meru). When the application came up for inter-parties hearing on 25/5/2018. Mr. Elijah Ogoti for the interested party sought adjournment stating that he was not ready to proceed as he had not been served with the application. The court directed the application to be served afresh and fixed the application for interparties hearing on 11/6/2018.

On the said 11/6/2018 only counsel for the applicant attended court and the court directed the application to be heard exparte.

In his brief submissions, Mr. Kiogora for the applicant urged the court to allow the application as unopposed.

I have considered the Notice of Motion dated 12th April 2018 and the supporting affidavit sworn the same date. I have also perused the attached documents in support of that application. It is apparent from the proceedings of this court and the orders issued that upon instituting of these Judicial Review proceedings on 9/6/2010 under certificate of urgency, the interested parties instructed the firm of Elijah Ogoti & Co. Advocates who filed Notice of Appointment on 17th June 2013. On 27/6/2013, the said firm of advocates requested to be supplied pleadings in respect of this suit from the firm of Kiogora Arithi & Associates. Prior to the appointment of the said firm of Advocates the parties had been acting in person and were conversant with the orders and directions given by the court. The interested parties who are represented by the firm of Elijah Ogoti & Co. Advocates failed to file any reply in opposition to the said application. The supporting affidavit of the applicant raises serious issues of fraud committed by the interested parties towards the transfer of the suit property in their favour.

These particulars of fraud include failing to disclose to the said registrar that the case over the suit property was pending for hearing and determination, failing to secure and obtain consent from the Land Control Board and failing to respect and obey the orders of the court as the case was pending in court.

These averments made an oath has not been controverted or challenged by the interested parties. As ordered on the judgment of these Judicial proceedings on 8/2/18, the orders of the Land Disputes Tribunal (LDT) no. 45 of 2002 and read in court CMCC LDT No. 7 of 2009 (Meru) where issued without jurisdiction and the same were therefore null and void.

To that extent therefore, any orders purporting to implement orders issued without jurisdiction also follows the same fate. The orders also become null and void. In the result therefore, I find that the application dated 12th April, 2018 merited and the same is allowed as prayed. The costs of this application shall be borne by the interested parties jointly and severally. It is so ordered.

Read, Delivered and signed this 6th Day of July 2018.

Mr.E.C. Cheron

ELC JUDGE

In the presence of;

- 1) Cc – Galgalo/Janet – present
- 2) Respondent Advocate – Absent
- 3) Applicant Advocate - absent