



REPUBLIC OF KENYA

IN THE ENVIRONMENTAL AND LAND COURT

AT KISUMU

JUDICIAL REVIEW APPLICATION NO. 1 OF 2018

IN THE MATTER OF AN APPLICATION BY UNITED MILLERS LIMITED

FOR LEAVE TO APPLY FOR ORDERS OF MANDAMUS AND PROHIBITION

AND

IN THE MATTER OF ARTICLES 22, 23, 40, 47, 50(1) AND 67 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF SECTION 78 OF THE LAND REGISTRATION ACT NO. 3 OF 2012

AND

IN THE MATTER OF SECTION 14 OF THE NATIONAL LAND COMMISSION ACT, 2012

AND

IN THE MATTER OF THE COUNTY GOVERNMENT ACT, 2012

AND

IN THE MATTER OF TITLE NO. KISUMU MUNICIPALITY/BLOCK 12/40

BETWEEN

REPUBLIC.....APPLICANT

EX-PARTE UNITED MILLERS LIMITED

VERSUS

THE COUNTY LAND REGISTRAR,

KISUMU COUNTY LAND REGISTRY.....1ST RESPONDENT

STATE DEPARTMENT OF HOUSING & URBAN DEVELOPMENT

KISUMU COUNTY DIRECTOR OF HOUSING.....2ND RESPONDENT

THE ETHICS & ANTI-CORRUPTION COMMISSION.....3RD RESPONDENT

AND

THE AGRICULTURE AND FOOD AUTHORITY.....INTERESTED PARTY

RULING

1. United Millers Ltd, the Exparte Applicant, moved the court through the Chamber summons dated 3rd January, 2018 and filed on the 10th January 2018, seeking for leave to apply for orders of Mandamus and prohibition in prayers (1) and (2). That in Prayer (3), they sought for “the grant of leave to operate as stay of any further administrative action by the respondents against the Applicant.” The court granted leave as prayed in prayers (1) and (2) exparte on the 15th January, 2018 and directed the application be served for hearing of prayer (3). The Senior Litigation counsel, for the Attorney General, entered appearance for the County Land Registrar and the County Director of Housing, the 1st and 2nd Respondents, vide memo dated the 23rd January, 2018. That M/s Grace K. Omweri filed the notice of appointment of advocate for Ethics and Anti-corruption, the 3rd Respondent, and further filed their replying affidavit sworn by the counsel on the 24th January 2018, and a supplementary affidavit sworn by Charles Kiptanui, an investigator with the 3rd Respondent on the 28th May, 2018. The Exparte Applicant responded to the supplementary affidavit through the further affidavit sworn by Sunil Narshi Shah, a director, on the 29th May, 2018.

2. The application came up for hearing on the 29th January, 2018 but was put off to allow the parties pursue an out of court settlement. That during the mention on the 30th May, 2018 the court was informed that the parties had failed to reach a settlement and directions on filing and exchanging written submissions among others, were given. That subsequently the learned counsel for the Exparte Applicant and 3rd Respondent filed their submission dated 7th January, 2019 and 14th February, 2019 respectively. The matter was last mentioned on the 20th February, 2019 when counsel for the 1st and 2nd Respondent indicated that they are not filing any submissions but will rely on that filed by the 3rd Respondent. The Agriculture and Food Authority, the Interested Party, has not entered appearance or filed any reply to the chamber summons or the notice of motion, though served with the chamber summons and mention notice as confirmed by Daniel Ochieng Roro Nyangwara and Moses Omondi Ogada in their affidavits of service, sworn on the 29th January, 2018 and 20th April, 2018 respectively. That though the submissions filed by the learned counsel for the Exparte Applicant and 3rd Respondent are clearly on the motion dated the 23rd January, 2018 and filed on the 1st February, 2018 on the basis that parties had agreed to maintain the status quo in respect of the suit property, there is no such order in the court record. That further, there is no evidence that the said Notice of Motion has ever been served upon the Interested Party and it would be unfair to proceed to hear the application, and make a determination thereof, without according them an opportunity to present their case. That accordingly this ruling will be restricted to prayer (3) of the Chamber summons dated 3rd January, 2018 and filed on the 10th January, 2018.

3. The following are the issues for the court’s determination:-

a. Whether the Exparte Applicant has made a reasonable case for the leave granted to operate as stay of any further administrative action by the Respondents against the Applicant.

b. Who pays the costs.

4. The court has after considering the grounds on the chamber summons, statement of facts, affidavit evidence and submissions filed come to the following determinations;

a. That pursuant to the leave as prayed in prayers (1) and (2) being granted exparte on the 15th January, 2018, all the Respondent and

Interested Party were served with the “certificate of urgency and chamber summons application all dated 3rd January, 2018 together with a court order dated the 15th day of January, 2018 and a hearing notice (for) the 22nd day of January, 2018...” as confirmed in the affidavit of service sworn by Daniel Ochieng Roro Nyangwara, on the 29th January, 2018. The extracted order 3 clearly indicated that prayer 3 was to be heard on the 29th January, 2018.

b. That out of the three Respondents and Interested Party, only the 3rd Respondent has filed replying and supplementary affidavits. The 3rd Respondent replying affidavit and supplementary affidavit details the nature of the investigations being carried out to confirm whether the transaction between the Exparte Applicant and Cotton Board of Kenya, which was the successor in title to Cotton Lint Seed Marketing Board, over the suit property was lawfully and procedurally done, with a view of initiating recovery proceedings.

c. That the granting of prayer (1) and (2) for the substantive application for orders of mandamus and prohibition does not in any way stop the 3rd Respondent, or any other investigative agency, from carrying or continuing to carry out their investigative duties under the law. That however, now that leave has been granted through the order of 15th January, 2018 and the substantive application dated the 23rd January, 2018 was filed on the 1st February, 2018, it is desirable that the legal status of the suit land be maintained pending its hearing and determination. That is the essence of prayer 3 of the Chamber summons and the court finds for the Exparte Applicant.

5. That flowing from the foregoing the court finds merit in prayer 3 of the Chamber Summons dated 3rd January, 2018 and the same is granted as prayed. The costs to abide the outcome of the substantive application.

Orders accordingly.

S. M. KIBUNJA

ENVIRONMENT & LAND - JUDGE

DATED AND DELIVERED THIS 10TH DAY OF JULY, 2019.

In presence of;

Applicant Absent

Respondents Absent

Interested Party Absent

Counsel Mr. Odhiambo for Rugamo for Applicant

M/s Aliongo for 1st & 2nd Respondents

M/s Omondi for 3rd Respondent

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE



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