



Case Number:	Judicial Review Application 1 of 2018
Date Delivered:	10 Jul 2019
Case Class:	Civil
Court:	Employment and Labour Relations Court at Kisumu
Case Action:	Ruling
Judge:	Stephen Murigi Kibunja
Citation:	Republic v County Land Registrar Kisumu County Land Registry & 2 others Exparte United Millers Limited; Agriculture and Food Authority (Interested Party) [2019] eKLR
Advocates:	Mr. Odhiambo for Rugamo for the Applicant M/s Alongo for the 1st & 2nd Respondents M/s Omondi for the 3rd Respondent
Case Summary:	-
Court Division:	Judicial Review
History Magistrates:	-
County:	Kisumu
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application partly allowed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**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.....1<sup>ST</sup> RESPONDENT**

**STATE DEPARTMENT OF HOUSING & URBAN DEVELOPMENT**

**KISUMU COUNTY DIRECTOR OF HOUSING.....2<sup>ND</sup> RESPONDENT**

**THE ETHICS & ANTI-CORRUPTION COMMISSION.....3<sup>RD</sup> 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 3<sup>rd</sup> January, 2018 and filed on the 10<sup>th</sup> 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 15<sup>th</sup> 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 1<sup>st</sup> and 2<sup>nd</sup> Respondents, vide memo dated the 23<sup>rd</sup> January, 2018. That M/s Grace K. Omweri filed the notice of appointment of advocate for Ethics and Anti-corruption, the 3<sup>rd</sup> Respondent, and further filed their replying affidavit sworn by the counsel on the 24<sup>th</sup> January 2018, and a supplementary affidavit sworn by Charles Kiptanui, an investigator with the 3<sup>rd</sup> Respondent on the 28<sup>th</sup> May, 2018. The Exparte Applicant responded to the supplementary affidavit through the further affidavit sworn by Sunil Narshi Shah, a director, on the 29<sup>th</sup> May, 2018.

2. The application came up for hearing on the 29<sup>th</sup> January, 2018 but was put off to allow the parties pursue an out of court settlement. That during the mention on the 30<sup>th</sup> 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 3<sup>rd</sup> Respondent filed their submission dated 7<sup>th</sup> January, 2019 and 14<sup>th</sup> February, 2019 respectively. The matter was last mentioned on the 20<sup>th</sup> February, 2019 when counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent indicated that they are not filing any submissions but will rely on that filed by the 3<sup>rd</sup> 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 29<sup>th</sup> January, 2018 and 20<sup>th</sup> April, 2018 respectively. That though the submissions filed by the learned counsel for the Exparte Applicant and 3<sup>rd</sup> Respondent are clearly on the motion dated the 23<sup>rd</sup> January, 2018 and filed on the 1<sup>st</sup> 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 3<sup>rd</sup> January, 2018 and filed on the 10<sup>th</sup> 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 15<sup>th</sup> January, 2018, all the Respondent and Interested Party were served with the “certificate of urgency and chamber summons application all dated 3<sup>rd</sup> January, 2018 together with a court order dated the 15<sup>th</sup> day of January, 2018 and a hearing notice (for) the 22<sup>nd</sup> day of January, 2018...” as confirmed in the affidavit of service sworn by Daniel Ochieng Roro Nyangwara, on the 29<sup>th</sup> January, 2018. The extracted order 3 clearly indicated that prayer 3 was to be heard on the 29<sup>th</sup> January, 2018.

b. That out of the three Respondents and Interested Party, only the 3<sup>rd</sup> Respondent has filed replying and supplementary affidavits. The 3<sup>rd</sup> 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 3<sup>rd</sup> 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 15<sup>th</sup> January, 2018 and the substantive application dated the 23<sup>rd</sup> January, 2018 was filed on the 1<sup>st</sup> 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 3<sup>rd</sup> 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 10<sup>TH</sup> 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 1<sup>st</sup> & 2<sup>nd</sup> Respondents

M/s Omondi for 3<sup>rd</sup> Respondent

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**



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