



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU

PETITION NO 11”A” OF 2012

ROBERT MURITHI & 2 OTHERS PLAINTIFF

VERSUS

M’MUTHAURA M’MIKWA & ANOTHER DEFENDANT

J U D G M E N T

BACKGROUND:

1. A long time ago, (in the 1990’s) there was a land dispute between the present 1st Respondent (M’Muithaura M’ Mikua) and one Solomon Murugu which gave rise to Land Dispute Tribunal Case No. 64 of 2002, whereby a decision was made on 05:07:05. This decision was adopted as a judgment of the Court on 21:12:05. The Magistrate apparently gave orders contrary to the decision in the award.

2. The Claimant M’Muthaura M’Mukua filed Misc. Application Judicial Review No. 75 of 2006, whereby the Lower Court Judgment was quashed. Meanwhile, Solomon who was the 2nd interested Party in the Judicial Review matter had sold this land to the present Petitioners. M’Muthaura was back in Court in Chief Magistrate’s Case No. 63 of 2005 where he prayed for orders of cancellation of all subdivisions of L.R No Ntima/Ntakira/1635 and for the Register to be corrected to revert to the status prevailing as at 20:12:05. The orders were given on 12:08:09.

3. The present Petitioners are the persons who had bought land from Solomon Kungania.

PETITIONERS CASE:

The three Petitioners case is that their parcels of land No. 3843, 3844 and 3845 were curved out of Land Parcel No. 1635 which land was the subject matter in LDT No. 639 2005. The Petitioners aver that they were never served with the suit papers which resulted in an order of cancellation of their title deeds. They aver that if the order to cancel the titles is implemented, their right to own property would be jeopardized.

CASE FOR THE RESPONDENTS.

Both Respondents aver that the orders granted by the Magistrates Court occasioning the Subdivision of Land Parcel No. Ntima/Ntakira/1635 were illegal, wrongful and unlawful. That is why the said orders were quashed by the High Court. The Respondent also aver that the order for cancellations of Petitioners titles was granted by the Magistrates Court in C.M.C.C No. 63 of 2005.

DETERMINATION:

I have weighed all the arguments raised herein including the Submissions advanced by the parties.

7. The first issue to determine is whether **Petitioners were aware of the litigation history of the Suitland**. Petitioners submit that the Respondent (in the Petition) continued Litigating over the Suit Property without disclosing that the land had been acquired by the Petitioners and that the Petitioners were never served with the suit papers.

8. The Land Dispute Tribunal Case was filed in 2005 and decision thereof was adopted as a judgment of the Court on 21:12:05. The leave to file the Judicial Review Motion in Misc. App 75 of 2006 was obtained on 17.05.06.

9. Meanwhile, the Petitioners appear to have entered into the agreement for sale of Solomon's Land on 05:05:06. The Certificate of conclusion of the Sale Agreement is dated 6.6.06 which is also date of transfer. For the 1st Petitioner, he was registered as the proprietor of parcel 3843 on 21.09.06 and his title deed was issued on 03.10.06.

10. For 2nd and 3rd Petitioners they were registered as proprietors of Parcel No. 3844 and 3845 and their titled were issued on 27.06.06.

11. It is clear that Petitioners had acquired the suit properties after the filing of the Judicial Review Case No. 75 of 2006. The 1st Respondent herein was therefore not expected to serve the Petitioners with the suit papers in both the tribunal forum and in the High Court JR Case. The fact that the process of acquisition of the property by Petitioners was carried out after the filing of the Judicial Review Motion and the speed with which the titles were acquired gives credence to Respondents averment that Petitioners were aware of these suits.

12. In the Judicial Review Misc App. 75 of 2006 decision, it was stated **“it is trite that a judgment or order of a court made without jurisdiction is a nullity.....This is expressed in the Latin Maxim *ex nihilo nihil fit* (out of nothing comes nothing). Having quashed the judgment it is upon the parties to move the lower Court and start the process afresh from that stage”**.

13. If this Court was to allow the Petition, it would in essence be varying and or setting aside the High Court decision in the aforementioned Judicial Review matter. There is no basis of varying or setting aside the said orders.

14. Another point to note is that after the decision in the Judicial Review Misc App. 75 of 2006 was given on 03:06:08, the 1st Respondent moved back to the lower Court to have the Judgement in LDT Case No. 63 of 2005 set aside. The Court in C.M.C.C No 63 of 2005 made orders that:-

“The land Registrar Meru do cancel all Subdivisions of L.R No. Ntima/Ntakira/1635, correct the Register and Reinstat it to the status prevailing as at 20:12:05”.

15. This order was given on 12:08:09. The question is, are the Petitioners aware of this order? If so, when did they become aware? In light of my earlier findings that Petitioners acquired their property after the Judicial Review case had been filed, then I find that the logical route for Petitioners to have taken was to seek to be enjoined in the matter. They didn't and this Court cannot protect their interest as such rights and interests appear to have been extinguished by the High Court decision.

16. The upshot of this is that **the Petition lacks Merits and the same is dismissed with costs to Respondents**.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 23rd JANUARY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Gatari for Petitioners present

Rimita for Respondent present

HON. L. N. MBUGUA

ELC JUDGE