



**Chege v Land Registrar, Naivasha (Environment & Land Petition
1 of 2023) [2023] KEELC 22226 (KLR) (14 December 2023) (Judgment)**

Neutral citation: [2023] KEELC 22226 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND PETITION 1 OF 2023
LA OMOLLO, J
DECEMBER 14, 2023
IN THE MATTER OF THE CONTRAVENTIONS AND
THREATENED CONTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEDOMS UNDER ARTICLES 21, 22, 23, 40,
47, 50(1) OF THE CONSTITUTION OF KENYA
AND
IN THE MATTER OF SECTION 79 OF THE LAND
REGISTRATION ACT
AND
IN THE MATTER OF INTERPRETATION, ENFORCEMENT
AND PROTECTION OF BILL OF RIGHTS UNDER ARTICLES
19, 20, 22, 23, 24, 165, 258 AND 259 OF THE
CONSTITUTION**

BETWEEN

SAMUEL WAINAINA CHEGE PETITIONER

AND

LAND REGISTRAR, NAIVASHA RESPONDENT

JUDGMENT

Introduction.

1. The Petitioner commenced the present proceedings vide the



Petition dated 11th January, 2023.

2. The Petitioner avers that he was registered as the owner of land parcel No. Naivasha/Mwichiringiri Block 4/1460 on 27th September, 2016 and was issued with a title deed.
3. He also avers that his father Chege Nganga Kariha transferred the suit property to him.
4. He further avers that on 27th January, 2020 and 7th February, 2020 he obtained certificates of official search which confirmed that he was the registered owner of the suit property.
5. It is his averment that on 20th December, 2022 he conducted a search on the suit property with the intention of securing a loan facility but was informed by the Land Registrar that the Green Card of the suit property had been cancelled.
6. It is also his averment that he was not given any reason for the said cancellation.
7. It is his further averment that he was not given a certified copy of the cancelled register when he requested for it. Upon protesting he was shown the said register and he took a picture.
8. The Petitioner avers that he sought legal advice and he was informed that the while the Registrar has legal authority to rectify entries in the register, such authority does not include physical crossing out and scribbling on the register.
9. The Petitioner also avers that he was not notified of any complaint against his ownership of the suit property and neither was he served with any application or proceedings seeking to challenge his ownership.
10. The Petitioner further avers that from the writings on the register, the Land Registrar acted unilaterally without involving him.
11. The Petitioner sets out alleged constitutional violations by the Respondent and prays for judgement against the Respondent for;
 - a. A declaration that Respondent's action to cancel and destroy the register of the land known as Title No. Naivasha/Mwichiringiri Block 4/1460 is unconstitutional, null and void.
 - b. A declaration that the Respondent's action violates the Petitioner's rights to acquire and own property and not to be deprived of the same under Article 40 of *the Constitution*, the right to fair administrative action under Article 47, the right to access to justice under Article 48 and the right to fair hearing under Article 50 of *the Constitution*.
 - c. An order that the Respondent creates another register bearing similar entries and information as the destroyed register and specifically showing the Petitioner as the proprietor as per the destroyed register.
 - d. An order that the Respondent bear costs of this suit.
 - e. This honorable court be pleased to issue such further or other orders as it may deem just and expedient for the ends of justice.

Factual Background.

12. An affidavit of service was filed on 6th February, 2023. It is sworn by John Maina. He deposes that on 18th January, 2023 he received copies of the Petition dated 11th January, 2023 from the Petitioner and he served them on the Respondent's office on the same day.



13. He deposes that the Respondent acknowledged service by stamping on his copy that was annexed to the Affidavit of Service. He further deposes that despite service, the Respondent did not enter appearance and did not file a response to the Petition.
14. On 23rd March 2023, this court gave directions that the petition would be heard by way of written submissions.
15. On 19th June 2023, the Petitioner confirmed having filed his submissions and the matter was reserved for judgement.

Issues for Determination.

16. The Petitioner filed his submissions dated on 23rd May, 2023.
17. The Petitioner gives a background and facts of the case and relies on Article 40 and 47 of *the Constitution*.
18. The Petitioner also relies on Section 79 of the Land Registration Act, Regulations 91, 92 & 93 of the Land Registration (General) Regulations 2017 and submits that before the Land Registrar rectifies a register, a hearing must be convened, summons issued and a determination made which process was not followed in the present matter.
19. The Petitioner relies on the judicial decision of Republic v District Land Registrar Meru North & another ex parte Kennedy Kimathi; M'Itabari M'Muriki (Interested Party) [2021] eKLR and seeks that the reliefs sought in the petition be granted as prayed.

Analysis and Determination.

20. After considering the petition and the submissions, the twin issues that arise for determination are whether the Petitioner is entitled to the orders sought in the Petition and who should bear the costs of the petition.
21. It is the Petitioner's case that he was registered as the owner of land parcel No. Naivasha/Mwichiringiri Block 4/1460 on 27th September, 2016 and was issued with a title deed.
22. It is also the Petitioner's case that on 20th December, 2022 he went to the Lands Registry to conduct a search on the suit property when he learnt that the Green Card had been cancelled by the Land Registrar.
23. The Petitioner therefore seeks that the court makes a declaration that the Respondent violated his rights under Articles 40, 47, 48 and 50 of *the Constitution* by cancelling the Green Card of the suit property without notifying him.
24. In support of his case, the Petitioner annexed to his Petition a copy of the title deed for land parcel No. Naivasha/Mwichiringiri Block 4/1460 issued in his name on 27th September, 2016.
25. The Petitioner also annexed to his Petition certificates of official search dated 27th January, 2020 and 7th February 2020. Both certificates of official search indicate that the Petitioner was registered as the owner of the suit property on 27th September, 2016 and a title deed issued on the same day.
26. The Petitioner also annexed to his petition a copy of the green card for land parcel No. Naivasha/Mwichiringiri Block 4/1460. It shows that the approximate area of the suit land is 1.224 Ha.



27. It is crossed on the face of it and written “CXD”. On the easements section it is indicated as follows;

“Noticeboarded returned to member in Mirera Suswa members...29/3/22.”

28. Entry No. 6 of the green card shows that the Petitioner was registered as the owner of the suit property on 27th September, 2016 and was issued with a title deed on the same date.

29. As noted before, the Respondent was served with the pleadings in this matter but did not file a response to the Petition.

30. The court in the judicial decision of Propwa Company Limited v Justus Nyamo Gatondo & another [2020] eKLR held as follows;

“The fact that the evidence is not challenged does not entirely mean that the Court will not interrogate the evidence tendered by the Plaintiff. The Court still has an obligation to interrogate the Plaintiff’s evidence and determine whether the same is merited to enable the Court come up with logical conclusion as ex parte evidence is not automatic prove of a case on the required standard. The Plaintiff has to discharge the burden of proof. See the case of Kenya Power & Lighting Company Limited... Vs...Nathan Karanja Gachoka & another [2016] eKLR, the Court stated: -

“I am of the opinion that uncontroverted evidence must bring out the fault and negligence of a Defendant, and that a court should not take it truthful without interrogation for the reason only that it is uncontroverted. A Plaintiff must prove its case too upon a balance of probability whether the evidence is unchallenged or not.”

Further the case of Gichinga Kibutha...Vs...Caroline Nduku (2018) eKLR, the Court held that: -

“It is not automatic that instances where the evidence is not controverted the Claimants shall have his way in Court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.”

31. Section 79 of the [Land Registration Act](#) provides for the procedure to be followed by a land registrar in rectification of a register. It provides as follows;

“(1) The Registrar may rectify the register or any instrument presented for registration in the following cases—

- a. in formal matters and in the case of errors, mistakes or omissions not materially affecting the interests of any proprietor;
- b. in any case and at any time with the consent of all affected parties;
- c. if upon resurvey, a dimension or area shown in the register is found to be incorrect, in such case the Registrar shall first give notice in writing to all persons with an interest in the rectification of the parcel;
- d. for purposes of updating the register; or



e. for purposes of correcting the name, address or other particulars of the proprietor upon the written application by the proprietor in a prescribed form.

(2) No alteration affecting the title of the proprietor may be made pursuant to sub-section (1) without the proprietor's consent unless—

(a) the proprietor has by fraud or lack of proper care caused or substantially contributed to the error, mistake or omission; or

(b) it would for any other reason be unjust for the alteration not to be made.

Provided that a written notice of ninety days shall be given to the proprietor of such intention to make the alteration.

(3) Upon proof of the change of the name or address of any proprietor, the Registrar shall, on the written application of the proprietor, make an entry in the register to record the change.

(3A) A person aggrieved by the decision of the Registrar under this section may apply to the Court for any necessary orders.

(4) The Cabinet Secretary may by regulations prescribe the guidelines that the Registrar shall follow before rectifying or directing rectification under this section and without prejudice to the generality of the foregoing, the regulations may provide for—

(a) the process of investigation including notification of affected parties;

(b) hearing of the matters raised; and

(c) the criteria to be followed in coming up with the decision.”

32. The Petitioner alleges that he was not notified that the green card of the suit property was going to be cancelled and further states that he only got to learn of the same when he went to conduct a search.

33. In the judicial decision of Sabina Nyambura Githina & another v Land Registrar, Thika Land Registry & 3 others; Real Capital Ltd (Interested Party) [2021] eKLR the court held as follows;

“The Deceased being the registered owner of the suit property was entitled to a Fair Administrative action and further entitled to Rules of natural justice before the cancellation of the title in his favour. There is no evidence produced in Court that before the registration of the Deceased was cancelled, he was given a chance to be heard. Further, there is no evidence that the Deceased was subjected to due process before his registration was cancelled or that the cancellation was done by a competent authority. There is no doubt that a Land Registrar has no power to cancel registration of a person's title and the same can only be done by a Court of law or competent tribunal. Purporting to cancel any registration therefore is acting ultra vires.” (Emphasis mine)

34. In the present matter it is evident that the Petitioner was registered as the owner of land parcel No. Naivasha/Mwichiringiri Block 4/1460 on 27th September, 2016. It is also evident that the green card of the suit property was cancelled.



35. Despite being served, the Respondent did not enter appearance or file a response to explain why the green card was cancelled.
36. As was held in *Sabina Nyambura Githina & another v Land Registrar, Thika Land Registry & 3 others; Real Capital Ltd (Interested Party)* (supra) cited above, the Land Registrar does not have the power to cancel registration of a person's title as this can only be done by a court of law or a competent tribunal.

Disposition.

37. In the result, I find that the Petitioner has proved his case on a balance of probability. Consequently, the Petition is allowed in the following terms;
 - a. A declaration is hereby issued that Respondent's action of cancelling and destroying the register of the land known as Title No. Naivasha/Mwichiringiri Block 4/1460 is unconstitutional, null and void.
 - b. A declaration is hereby issued that the Respondent's action violates the Petitioner's rights to acquire and own property and not to be deprived of the same under Article 40 of *the Constitution*, the right to fair administrative action under Article 47, and the right to fair hearing under Article 50 of *the Constitution*.
 - c. The Respondent is hereby ordered to create another register bearing similar entries and information as the destroyed register and specifically show the Petitioner as the proprietor of the suit land as per the destroyed register.
 - d. The petitioner shall have costs of this this suit.
38. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 14TH DAY OF DECEMBER, 2023.

L. A. OMOLLO

JUDGE

In the presence of: -

Mr. Gichugi for the Petitioner.

No appearance for the Respondent.

