



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISC. CIVIL APPLICATION NO 69 OF 2010

REPUBLICAPPLICANT

VERSUS

THE DISTRICT LAND REGISTRAR

MERU CENTRAL DISTRICT.....RESPONDENT

Ex-Parte

NELLY G. SOLOMON & MOSES N.KIRIMA.

J U D G M E N T

1. The exparte Applicants in their Notice of Motion dated 18th October, 2010 seek orders:-

1. ***THAT*** this Honourable Court be pleased to issue the Judicial Review Orders of Certiorari to remove into this Honourable Court and quash forthwith the decision of the District Land Registrar, Meru Central District, under Gazette Notice No. 3450 of 1st April, 2010 in which he purports to revoke the ex-parte applicants' title to that land parcel and/or plot known and /or described as Plot No. Meru MUNICIPALITY/BLOCK 1/264 situated within the Municipal Council of Meru.

2. ***THAT*** this Honourable Court be pleased to issue the Judicial Review Orders of Mandamus directed to the District Land Registrar, Meru Central District requiring him to forthwith re-instate the ex-parte applicants' title to the said Plot No. MERU MUNICIPALITY/BLOCK/264 situated within the Municipal Council of Meru.

3. ***THAT*** this Honourable Court be pleased to issue the Judicial Review Orders of Mandamus directed to the District Land Registrar, Meru Central District, requiring him to forthwith cancel the entry itemized as entry No. 4 made on 23/03/2010 in the register for plot No. MERU MUNICIPALITY BLOCK 1/264 and to forthwith re-instate the registration of the ex-parte applicants herein as the owners of the said plot.

4. ***THAT*** this Honourable Court be pleased to issue the Judicial Review Orders of prohibition directed to the District Land Registrar, Meru Central District, prohibiting any other attempts and/or further or future attempts to revoke , once re-instated, the ex-parte applicants' title to

plot No. Meru Municipality /Block 1 /264 situated within the Municipal Council of Meru.

5. **THAT** the costs of these proceedings be provided for:

2. This application has the following grounds:-

(a) ***The 1st applicant is the registered owner of the Land Parcel and/ or plot known and/or described as plot No. MERU MUNICIPALITY/BLOCK 1 /264 having been so registered on 27/04/1998 and is in possession of Certificate of Lease thereto dated 27th April, 1998 and owns a portion therein measuring approximately 0.067 Ha while the remaining portion measuring 0.101 Ha is owned by the 2nd applicant.***

(b) ***The 1st applicant became the registered owner of the said plot and/or plot (sic) as the original allottee while the 2nd applicant became the owner of a portion measuring approximately 0.101 Ha part thereof as a bonafide purchaser for value without Notice having bought the same from the 1st applicant herein in a lawful transaction duly approved and sanctioned by the Government of Kenya.***

(c) ***The District Land Registrar , Meru Central District, who is the respondent herein has in Gazette Notice No. 3450 of 1st April, 2010 purported to revoke the exparte applicants' title to the said plot /property.***

(d) ***The said District Land Registrar, Meru Central District, has further and unlawfully made an entry itemized as entry No. 4 made on 23/03/2010 in the register for plot No. MERU MUNICIPALITY/BLOCK 1/264 purportedly revoking the registration of the ex-parte applicants as the owners of the said plot.***

(e) ***The said decision and actions by the said District Land Registrar, Meru Central District, are illegal and unlawful and were arbitrarily made in total violation of the tenets of natural justice.***

(f) ***The said decision and actions by the said District Land Registrar, Meru Central District, are an infringement on the ex-parte applicants' proprietorship right on individual and or private property as enshrined in the Constitution of Kenya and in the Registered Land Act, Cap 300 Laws of Kenya.***

(g) ***The District Land Registrar, Meru Central District, acted ultra vires as he has no Authority, power or jurisdiction under any Law to purport to revoke the ex-parte applicants' title to the said plot, and particularly, under the Registered Land Act Cap 300 Laws of Kenya under which the said plot is registered.***

(h) ***The said decision and actions by the said District Land Registrar, Meru Central District, are by all means and in the circumstances of this case, illegal, unlawful and unreasonable for all intent and purposes and the same ought to be quashed forthwith and the respondent directed to re-instate the ex-parte applicants' title over the said property and their registration as the owners thereof and further that the respondent be prohibited from any further or future attempts to revoke the ex-parte applicants' title over the said property.***

(i) ***The ex-parte applicants' title to the said plot No MERU MUNICIPALITY/BLOCK1/264 is a first registration and is therefore indefeasible in Law by virtue of the provisions of Section 28 of the Registered Land Act, Cap 300 Laws of Kenya under which the said plot is registered Land.***

(j) ***The nature and circumstances hereof are greatly in favour of granting of the prayers being sought for by the ex-parte applicants vide this Notice of Motion.***

(k) ***The ex-parte applicants have duly sought for, and obtained leave from this Honourable Court to apply for the Judicial Review Orders sought for vide this application as required by***

law.

THE EX-PARTE APPLICANTS' SUBMISSIONS

3. The ex-parte applicants aver that Plot No. Meru Municipality/ Block 1 /264 is owned jointly by them. The 1st applicant's share is 0.067 ha and the second applicant's share is 0.101ha . They say that the 2nd exparte applicant obtained his portion by way of sale to him by the 1st applicant, although the transfer process was not effected. They say that the 1st exparte applicant was the original allottee.

4. The exparte applicants say that on 1st day of April, 2010, the Respondent placed and/or caused to be published Gazette Notice No. 3450 in which he purported to revoke the titles for various land parcels which include the subject plot herein, Meru Municipality/Block 1/264.

5. The exparte applicants say that plot No. Meru Municipality/ Block 1 /264 is jointly owned by them and that the 1st exparte applicant has a share of 0.101 ha and the second exparte applicant has a share of 0.067 ha. They say that as at the time of the purported revocation, the title of Plot No. Meru Municipality/Block1/264 was in the names of Nelly Solomon who is the 1st exparte applicant. They say that she has in her possession a certificate of lease over the plot which was issued on or around the 27th day of April, 1998.

6. The exparte applicants say that the subject plot was allocated to the 1st exparte applicant by the Government through the Commissioner of Lands by way of an allotment letter dated 05/07/1996. They further say that the 1st applicant paid the requisite allotment fees and other charges demanded from her through the allotment letter. They also say that the 1st ex-parte applicant thereafter applied for and obtained the apposite Consent for Sub-division of the plot into two and she sold the portion designated as "A" and measuring approximately 0.101 Ha to the 2nd ex-parte applicant. They proffer that they have extensively developed their portion and specifically state that the 2nd exparte applicant had a storeyed residential house worth millions of shillings standing on the land.

7. The exparte applicants tell the Court that it is not in dispute that the respondent caused to be published Gazette Notice No. 3450 on 01/04/2010 which purported to revoke the title to the subject land. They submit that the Gazette Notice in issue is unlawful, irregular and unprocedural, therefore, meriting quashing by this Court. They say that they were condemned unheard and this was a violation of the Rules of Natural Justice and yet they are the persons in ownership, possession, occupation and use of the property for which the title was purportedly by revoked.

8. They submit that the Respondent's decision to purport to cancel the title of their land was in contravention of their rights to own property as enshrined in the constitution of Kenya, in the defunct Registered Land Act, Cap 300 of the Laws of Kenya, and also as now reflected in the present Land Registration Act, 2012.

9. The exparte applicants proffer that the respondent in publishing Gazette Notice No. 3450 in the Kenya Gazette acted *ultra vires* his jurisdiction as he had no legal mandate and/or power under any written law to purport to revoke a title to land which power is only vested in the High Court of Kenya. Therefore, they submitted, the respondent's decision and action were a nullity as they had no legal basis as they were founded on NO law at all. For this reason, the exparte applicants ask the Court to quash the respondent's decision.

10. The respondents, in support of their Submissions proffer the following authorities.

a) Nairobi HC Petition No. 107 of 2011, (2011) eKLR Kuria Greens Ltd Versus Registrar of Titles & Another.

b) Nairobi HC Civil Appeal No. 233 of 2000 Daniel Miano Ngare Versus Mwaura Kamau.

c) Nairobi High Court Petition No. 178 of 2011- In the matter of Kenya Gazette numbers 3640,

9230, 7751 and 3104 between : *Power Technics Limited AND The Hon. Attorney General & 2 others.*

d) Nairobi Court of Appeal No. 13 of 1980- M'Mukanya Versus M'Mbijiwe.

e) The Kenya Constitution

Article 20(3) (a) & (b)

Article 40 (1) (a) & (b), 2(a) & (b) and (3)

Article 47(1) & (2)

Article 25(1)

Article 26(1)

Article 50(1)

Article 64(a), (b) and (c)

(f) The Land Registration Act, 2012

Section 24 (a)&(b)

Section 25(1)

Section 26(1)

Section 80(1)&(2)

RESPONDENT'S WRITTEN SUBMISSIONS

11. The Respondent in opposition to the Exparte Applicants' case relies on the affidavit of Harrison Musumiah, the District Land Registrar, Meru who avers that the land in dispute was curved out of a Government plot without the authority and/or Consent of the user Department. The respondent avers that it is trite law that a party can not transfer a legal title in property he does not own.

12. The Respondent says that the plot in dispute has always been reserved for Government use and hence was not available for alienation. The respondent laconically submits that the exparte applicants have never been in occupation of the suit land as the same neighbours the compound of the Regional Commissioner.

13. The respondent argues that he is wrongly enjoined as the application offends section 112 (1), Chapter 40, Laws of Kenya that states: "subject to the provisions of any other written law, Civil suits by or against the Government shall be instituted by or against the Attorney General , as the case may be". He says that actions that led to the filing of this suit were done by virtue of the Registrar's duties and not personally and he ought not to be sued in his personal capacity.

14. It is argued for the respondent that this application was overtaken by events as the title was cancelled or revoked way back on 1st April, 2010 vide Gazette Notice No. 3450. The Respondent claims no beacons, identification or beaconing had been carried out as the Ministry of Housing, which the respondent claims to own the land on which the disputed property stands, never consented to the exercise . The Respondent also says that the Municipal Council of Meru lacked authority to alienate a public utility property. The Respondent continues to say that the part Development plan which was used to Sub-divide the property did not exist and further opines that if the applicant retains one, then it is a

forgery and was fraudulently obtained without proper procedures being followed.

15. The respondent states that neither the Municipal Council nor the Commissioner of Lands had power to alienate the suit land. He says that section 3 of the Government Lands Act. Cap 280. vests power to allocated unalienated land in the President. He quotes Section 7 thereof as stating:-

“The Commission may, or an Officer at the Lands Department subject to special directions from the President, execute for and on behalf of the President any conveyance, lease or license of or for the occupation of Government lands, and do any act or thing, exercise any power and give any order and direction and sign or give any document which may be done, exercised, given or Signed by the President under this Act.

Provided that nothing in this Section shall be deemed to authorize the Commissioner or such officer to exercise any of the powers conferred upon the President by Section 3, 12, 20 and 128”.

16. The respondent challenges the exparte applicants to produce evidence that the president had granted power to the Commissioner of Lands to alienate the subject land. He says any alienation by the Commissioner of lands or the Municipal Council done without the President's authority is a nullity for being contrary to express provisions of the law and in particular Section 75 of the repealed Constitution. He states no valid title or lease under had been passed to the 1st exparte applicant.

17. The Respondent has proffered Meru High Court Petition No. 3 of 2010 as his authority to buttress his Submissions.

DETERMINATION

18. In these Judicial Review proceedings, the exparte applicants seeks 4 orders:-

(a) An order of Certiorari to remove into this Court and quash forthwith the decision of the District Land Registrar, Meru Central District, under Gazette Notice No 3450 of 1st April, 2010 in which he purports to revoke the exparte applicants' title to that land parcel and/ or plot known and/or described as plot No Meru Municipality /Block/264 situated within the Municipal Council of Meru.

(b) An Order of Mandamus directed to the Land Registrar, Meru Central District, requiring him to forthwith reinstate the exparte applicants' title to the said plot No. Meru Municipality/Block1/264 situated within the Municipal Council of Meru.

(c) An Order of Mandamus directed to the District Land Registrar, Meru Central District , requiring him to forthwith cancel the entry itemized as entry No. 4 made on 23/3/2010 in the register for plot No. Meru Municipality/Block 1/264 and to forthwith reinstate the registration of the ex-parte applicant's herein as the owners of the said plot.

(d) An order of prohibition directed to the District Land Registrar, Meru Central District prohibiting any other attempts and/or further or future attempts to revoke, once reinstated, the exparte applicants' title to plot No. Meru Municipality /Block 1/264 situated within the Meru Municipal Council of Meru .

19. Judicial Review proceedings in Kenya are circumscribed by Order 53 of the Civil procedure rules. I find that this application was filed in full consonance with the requirements of Order 53 of the Civil Procedure Rules. Issues such as if or not the Respondent was properly cited fall under other provisions of the law.

20. Judicial Review proceedings address actions or inactions emanating from public bodies, public authorities and public servants. There must be a palpable presence of a public character for a matter to invite Judicial Review proceedings. There are palpable public concern issues evinced by this application.

21. Generally, the range of matters that invite Judicial Review proceedings can be summarized as:-

- (a) that a breach of the rules of Natural Justice has occurred;***
- (b) that procedures that were required by law to be observed were not observed;***
- (c) that the person who purported to make the decision did not have jurisdiction to make the decision.***
- (d) That the decision was not authorized by the enactment in pursuance of which it was purported to be made.***
- (e) That the decision involved an error of law;***
- (f) that the decision was induced or affected by fraud;***
- (g) that there was no evidence or other material to justify the making of the decision; and***
- (h) that the making of the decision was an improper exercise of the power conferred, by reason that an irrelevant consideration was taken into account, a relevant matter was not considered, the power was exercised for an unauthorized purpose, the decision was exercised in bad faith, the decision maker acted at the unlawful unnecessary direction or behest of another person, the decision maker applied a rule or policy without regard to the merits of the decision, the exercise of power was so unreasonable that no reasonable person could have so acted, the result of the exercise was uncertain, or there was otherwise an abuse of power; or***
- (i) that the decision was otherwise contrary to law.***

This Court will find if or if not any or many of the above grounds exist in this suit.

22. The Respondent has told the Court that he relies on Meru High Court Petition No 3 of 2010 in support of his submissions in opposition to this suit. For unknown reasons, he has not annexed his authority to his Submissions. But since this was a decision made at Meru, it has been possible to retrieve the apposite file. I opine that the circumstances of that case are different from the circumstances of this case. One, this suit is in the nature of Judicial Review Proceedings; Two in this case, the ex parte applicants have been in possession of the disputed land. Indeed, the claim by the 2nd ex parte applicant that he had put up on the suitland a building worth millions of shillings has not been controverted.

23. The Court of Appeal in an appeal concerning Petition No. 3 of 2010 in Civil Appeal Case No 2014 at Nyeri opined as follows:-

“We note that it is not in dispute that the 2nd respondent has always been in actual and physical occupation of the suit property from 1989 to-date. The appellant must have known of this fact when he applied for the suit property to be allotted to him. In his application for allotment of a commercial plot made by letter dated 21st March, 1997, the appellant identified the suit property and marked it red in the attachment. The inference to be drawn is that the appellant identified and knew the specific plot he desired and knew that the 2nd respondent was in physical possession; it was the appellant’s clear intention not only to dispossess the 2nd appellant of the suit property but to acquire a public utility land that was in possession of a public entity. The bona fides of the appellant in applying for the specific suit property knowing that it was in possession and occupation of a public entity is put in issue. In *Mwangi & Another –v – Mwangi*, (1986) KLR 328, it was held that the rights of a person in possession or occupation of land are equitable rights which are binding on the land. It is our view that the 2nd respondent having been in possession of the suit property since 1989 to date, its rights are binding on the suit property and even if the appellant had any claim to the suit property, the 2nd respondent’s possessory rights are overriding”.

23b. I opine that the exparte applicants being the persons in possession and occupation of the suitland, they have equitable rights which are binding on the suit property.

23(c). The issue of if or not the Commissioner of Lands has the power to alienate land including the suit land was raised. The respondent argued that section 3 of the Governments Lands Act vested the power to alienate unalienated land to the president in the president. He said that Sections 3 and 7 of the Government Lands Act were unequivocal in support of this assertion.

23(d) Having carefully looked at the law, I agree with this proposition. However, and in a veritably convenient manner, the Respondent has failed to take cognizance of the fact that a footnote to Section 3(a) of the Government Lands Act is pellucid that the powers of the President to make grants or dispositions of any estates, interests or rights in or over unalienated Government land were delegated by an appropriate statutory instrument to the Commissioner of Lands. This puts to rest the submission that the Commissioner of Lands had no power to alienate the suit land to the 1st exparte applicant.

24. I find it necessary to address the key issues brought out by the Respondent's Submissions. One is his argument that the allocation of the subject land to the 1st Respondent was a nullity as there was no proof that the President had given special directions to the Commissioner of lands as required by section 7 of the Government Lands Act. I do opine that where such special directions are given to the Commissioner of Land, he is the Custodian of such directions. It would be unreasonable to expect the exparte applicants to produce such directions. Except for alleging that such directions had not been issued, the Respondent admits that when proper directions were issued by the President, the Commissioner had powers to allocate Government land. He has refused to tell the Court that the President had delegated some of his powers to the Commissioner of Lands.

25. It is common knowledge that in the 1980's and 1990's Plots Allocation Committees chaired by Provincial Commissioners or District Commissioners were created in all parts of Kenya for purposes of allocating plots in the Country and the Commissioner of Lands would act in accordance with their Minutes. These Committees were established at the behest of the office of the President. It can be inferred that necessary authority had been given to the Commissioner of Lands to effectuate the resolutions of the Plots Allocation Committees. However, to obviate the need for the Commissioner of Lands to frequently seek special directions from the President, the powers of the President were vide a statutory instrument delegated to the Commissioner of Lands. The foot note germane to section 3(a) of the Government Lands Act is apposite.

26. The other Submission is that the Commissioner of lands had no Powers to allocate land belonging to the Ministry of Housing. I disagree. Section 7 is pellucidly clear that with the approval of the President, the Commissioner could allocate Government land generally irrespective of to which Ministry it belonged to. I do not find any evidence that in allocating the subject land to the 1st defendant, the Commissioner of Lands had acted contrary to any Written Law as alleged by the Respondent. Specifically, I do not find that section 75 of the defunct Constitution of Kenya was breached by the Commissioner of Lands or the Municipal Council of Meru.

27. I do not find any merit in the Respondent's claim in his Submissions that the applicant has never been in occupation of the suitland. The fact that the 1st Defendant received a letter of allocation in 1996, had a lease from 1998, had the plot subdivided into 2 when she sold it to the 2nd defendant and had all along been paying Council dues is indicative of her occupation of the Suit land.

28. More telling is that the District Surveyor on 7th July, 2000 recommended approval of the subdivision of plot No. Meru Municipality Block 1/264. The Director of Physical Planning issued Certificate of Compliance No 01379 allowing the Subdivision of the plot.

29. The Commissioner of Lands through a letter signed by one Gitau J.M enclosed a lease in triplicate, duly signed, for registration. The letter indicated that Registration fee of Kshs. 250/= had been paid vide receipt No. D 564484 of 19/8/94.

The lease was duly registered and issued to the 1st ex parte applicant. It is noted that Gazette Notice No. 3450 of 1st April, 2010 was published many years after the land was allocated to the 1st ex parte applicant.

30. In finding that the ex parte applicants were in possession and occupation of the Suitland, I adopt the opinion of the Court of Appeal in Civil Appeal No. 13 of 1980- M' Mukanga V. M' Mbiijiwe that held that: ***“Once a person has paid the due rent and is given a plot number, he is presumed to be in possession and is entitled to sue for trespass”***. In this matter the ex parte applicants had not only been paying Municipal Council dues and apposite rent but also had title to the disputed land evidenced by a lease issued by the Government, through the Commissioner of Lands, and registered by the District Lands Registrar, the respondent herein.

31. I do opine that although I have addressed the issue of who is in possession and occupation of the land, this issue is peripheral to the determination to be made in this case. This is because Judicial Review Proceedings by and large address the integrity of the process leading to the taking of the action of making the decision being challenged. In paragraph 20 hereof, I have enumerated the main grounds which may invite Judicial Review proceedings.

32. Another important Submission made by the Respondent is that this suit should have been instituted against the Attorney General and not against the respondent as this was offensive to Section 112(1) of Chapter 40 of the Laws of Kenya. I hasten to add that this Submission has rather been watered down by the Attorney Generals full participation in this suit. I also wish to take recourse to Article 159 (2)(d) of the constitution which states:-

“S 159 (2) (d) Justice shall be administered without undue regard to procedural technicalities;”.

33. I deem the Submission that the Respondent could only be sued through the Attorney General, a mere procedural technicality. I dismiss this Submission. I also do opine that Judicial Review proceedings are in a sui generis genre governed mainly by Order 53 of the Civil Procedure Rules. I also dismiss the notion and the Submission that the Respondent is sued in his personal capacity, He is sued as the public officer who performed the challenged action.

34. I now turn to the Respondent's Submission that these Judicial Review proceedings have been overtaken by events because the apposite title was revoked vide Gazette Notice No. 3450 of 1st April, 2010. I disagree. This is for the reason that the ex-parte applicants have applied for the Judicial Review Orders of Certiorari to remove into this Court and quash the decision of the District Land Registrar, Meru Central District Under Gazette Notice No. 3450 of 1st April, 2010 in which he purports to revoke the applicants' title to that land parcel and/or plot known and/or described as Plot No. Meru Municipality /Block 1/264 situated within the Municipal Council of Meru.

35. I have perused the Submissions made by the two sides. I have carefully considered the authorities proffered in these proceedings. The authorities are suitable decisions in appropriate cases However each suit has its in-built particularities. No one shoe size fits all. I am persuaded by those that suit the particularities of this suit.

36. I do find that the ex parte applicants were condemned unheard. This was against the rules of natural justice. The respondent has demonstrated that he never attempted to hear the ex parte applicants before embarking on the process that led to the challenged action which contained the decision for which Judicial Review Orders are prayed for.

37. The 1st Ex parte Applicant had ownership, through a lease, of the disputed land for several years. It is against Constitutional and statutory provisions to wake up one morning and without due process to purport to deny a citizen ownership of his property. There is a plethora of cases whose common thread is the finding that Registrars of Land have no power to cancel titles.

38. In *Charles Malenya and 22 others versus Registrar of Titles* [2012] e KLR the Court quoted with approval the opinion of Musinga, J, in *Kuria Greens versus Registrar of Titles and another* [2011] e KLR -Petition No. 107 of 2010 as he then was, where he said that if the Registrar felt a title to land had been fraudulently or illegally acquired he had no power to cancel or revoke a title to land by way of a Gazette Notice. He set out, in his view, the procedure to be adopted as follows:-

“If the respondents were satisfied that the suit land had been unlawfully alienated and that it was in the interest of the public that the land reverts to the state ...appropriate notice ought to have been given to the petitioner and thereafter the Respondent ought to have exercised any of the following options:-

(a) Initiate the process of Compulsory acquisition of the suit land and thus pay full and prompt compensation to the Petitioner or

(b) File a suit in the High Court challenging the Petitioner's title and await determination one way or the other.

Short of that, the respondents' purported action of revoking the petitioner's title is an affront to private proprietary rights which are guaranteed by our Constitution and such an action must be frowned upon by the law”

39. **Power Technic Limited Versus the Attorney General and 2 others [2012] eKLR-Petition 178 of 2011**, The Court issued a declaration in the following words:

“A declaration be and is hereby issued declaring that the revocation of titles issued under the Registration of Titles Act (chapter 281 of the Laws of Kenya) by the Registrar of Titles, the Commissioner of Lands or any other officer authorized by them by way of publication of a Gazette Notice under the provisions of the Government Lands Act (Chapter 280 of the Laws of Kenya) and the Trust Land Act (Chapter 288) or any other law is contrary to Article 40 and 47 (1) of the Constitution and is therefore null and void”.

40. That there is Universality of opinion to the effect that Registrar's do not have powers to revoke titles to land on assumed public interest concerns is buttressed by the opinion of Mwongo J, Now Principal Judge, in *Republic Versus The Registrar of Titles, Mombasa and 2 others Exparte Emfil Limited* [2012] eKLR. He opined as follows:-

“I have considered the respective submissions by Counsel on the main issue of the Registrar's power to revoke title to land and the justification of Public interest and I have to find that there is unanimity among the Courts that the Registrar has no authority in law to revoke or cancel titles to land whether in public interest or not”.

“I find that the Government can not revoke title to land even for public need and interest” or for alleged illegality. The Government is obliged to move the Court for appropriate orders to revoke, cancel or rectify title in such circumstances. A unilateral decision published in the Gazette will not do. The consideration of public interest such as represented by the Respondent in these proceedings may only be used by the Court in an appropriate case in making an order for cancellation of title or in authorizing subject to due compensation the compulsory acquisition or takeover of private property”.

41. In *Petitions 82 to 90 and 92 [John Mukira Wachihi Versus Minister of Lands and Six others* [2013] eKRL, the Court opined as follows:-

“The question whether the Registrar or indeed any of the respondents has a right to revoke the title of a registered owner of property by way of a Gazette Notice has been the subject of several decisions of this Court, and, in my view, is now settled in the negative.”

42. I have carefully examined the provisions of the Registered Land Act Under which the suit property is registered. Under Section 142, the registrar may rectify the register of any instrument presented for registration in formal matters and in the case of omissions not materially affecting the interests of any proprietor. By any stretch of imagination, this can not be expanded to include revocation or cancellation of a title.

Clearly no provision of the Act allows the Registrar to revoke or cancel any title to land.

43. I find that the Respondent acted Ultra Vires his powers and Jurisdiction . He cannot be allowed to register the lease of the 1st respondent and then years later without explanation purport to revoke the validity of that lease. The process leading to the Respondent's decision which is being challenged in these proceedings is veritably tainted with illegality and procedural impropriety. It violated the rules of natural justice. As lord Diplock opined in the case of Attorney General versus Ryath (1980) AC 718 at page 73: ***“It has long been settled that a decision affecting the rights of an individual which is arrived at by a procedure which offends against the principles of Natural Justice is outside the jurisdiction of the decision making authority”.*** In this case, the Land Registrar did not have power to revoke or cancel the title to the suitland.

44. Having considered all the issues germane to these Judicial Review Proceedings, I find that the orders sought are meritorious . I however , do not find it necessary to grant prayer 4 which once the other prayers are granted is rendered rather superflous. The prayer is veritably presumptive and speculative.

45. I grant orders in terms of prayers 1,2, and 3 of this application.

46. Accordingly, I issue an order of Certiorari to remove into this Court and quash the decision of the District Land Registrar, Meru Central District, Under Gazette Notice No. 3450 of 1st April, 2010 in which he purports to revoke the ex-parte applicants title to Land Parcel Plot known as MERU MUNICIPALITY/BLOCK1/264 situated within Municipal Council of Meru.

47. I issue an Order of Mandamus directed to the District Land Registrar, Meru Central District , requiring him to forthwith cancel the entry itemized as entry No. 4 made on 23/03/2010 in the register for Plot No. MERU MUNICIPALITY/BLOCK 1/264 and to forthwith re-instate the registration of the ex-parte applicants herein as the owners of the said plot.

48. Costs are awarded to the ex-parte applicants.

DELIVERED IN OPEN COURT AT MERU THIS 27TH DAY OF APRIL, 2016 IN THE PRESENCE OF :-

CC: Daniel /Lilian

Nyamu Nyaga for the ex-parte applicants

A.G for the Respondent-Absent

P.M. NJOROGE

JUDGE