



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**CONSTITUTIONAL AND JUDICIAL REVIEW DIVISION**

**PETITION NO. 46 OF 2014**

**IN THE ARTICLES 19,22,23,40,47,50 & 64 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF CONTRAVENTION OF RIGHT TO PROPERTY & PURPORTED  
REVOCATION OF TITLE NO. LAIKIPIA/KINAMBA/MWENJE BLOCK 1/311 VIDE  
GAZETTE NOTICE NO. 13287 OF 27TH SEPTEMBER 2013**

**BETWEEN**

**ELIJAH GITHINJI CHARARA.....PETITIONER**

**VERSUS**

**COUNTY LAND REGISTRAR, LAIKIPIA.....1ST RESPONDENT**

**HON. ATTORNEY GENERAL.....2ND RESPONDENT**

**ZAKAYO KAMAU THEURI.....INTERESTED PARTY**

**RULING**

1. The notice of motion dated 19th June 2014 seeks that conservatory orders do issue restraining the interested party (Zakayo Kamau Theuri) from selling, transferring, charging, leasing, disposing or in any other adverse manner dealing with title no. Laikipia/Kinamba/Mwenje Block 1/1311. The reasons being that the petitioner's (Elijah Githinji Charara) registration as the proprietor of that parcel was revoked and/ or cancelled without following the due process of the law. The petitioner has moved to challenge the cancellation and unless conservatory orders are issued, the interested party is bound to adversely deal with the parcel and defeat any judgment that might be passed against him.

2. The respondents counsel Miss Khatambi had no objection to the prayers as they did not affect her client. The interested party did not file any response to the application. In the supporting affidavit, the petitioner deposes that he acquired the suit property for valuable consideration from the previous proprietor one James M. Jepheth and was duly issued with a title deed on 10th March 2011. He has been in possession of that parcel since then. However on 13th May 2013 when he conducted a routine official search of the property, he learnt that the interested party had registered a caution against the title, on 20th April 2012. On 3rd June 2013, he received a demand letter from the interested party's advocate, requiring him to surrender his title deed to the land office for cancellation on claims that the interested party had acquired the land through purchase from the original allottee. on 15th July

2013, he filed an application against the interested party under Njahururu PMCC Misc. Appl. no. 15 of 2013 seeking an order for removal of the caution. The interested party also filed his pleadings in the matter, but while these proceedings were pending, the petitioner sent a letter through his advocate to the effect that the title had been cancelled by the County Land Registrar, Laikipia vide Kenya Gazette notice no. 13287 of 27th September 2013. An abstract of title obtained from Laikipia land registry confirmed the cancellation.

3. It is the petitioners lament that prior to this cancellation, he had not received any notice or communication from the County Land Registrar Laikipia that his title was in the process of being cancelled, nor was he accorded any hearing before the decision was made. He contends that the county Land Registrar (1st respondent) was and is still under a constitutional obligation to give reason for his decision, especially because the petitioner believes he had no powers under the law to cancel his title. Further that the action of the 1st respondent amounts to expropriation of his present property without compensation and without due process.

4. I have considered the depositions and annexures stated by the petitioner. The fact that his title has been cancelled means that he cannot now control any adverse activities affecting the property. He is aggrieved by that decision and has challenged it in court, which means that if the property is not preserved, the other party in whose favour the title now exists can deal with the same in any manner he desires including sub-dividing, selling, leasing or even disposing of the property entirely. This will adversely affect and be prejudicial to the applicant, in the event that the suit he has filed herein succeeds, I find that the petitioner has sufficiently and adequately demonstrated why it is necessary that pending hearing and determination of this petition, that suit property be preserved by way of conservatory orders. Subsequently the application is merited and I order that conservatory orders do issue restraining the interested party from selling, transferring, charging, leasing, disposing or in any other adverse manner dealing with title no. Laikipia/Kinamba/Mwenje Block 1/1311 until this is petition heard and determined.

**Written and DATED this 16<sup>th</sup> day of December 2014 at BUNGOMA.**

**H.A. OMONDI**

**JUDGE.**

**Delivered and dated this 20<sup>th</sup> day of January, 2015 at Nakuru**

**JANET MULWA**

**JUDGE.**