



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**  
**JUDICIAL REVIEW DIVISION**  
**JR MISCELLANEOUS APPL. NO. 81 OF 2011**

**REPUBLIC ..... APPLICANT**

**versus**

**DISTRICT COMMISSIONER,**

**LANGATA DISTRICT .....1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL .....2<sup>ND</sup>  
RESPONDENT**

***EX PARTE***

**KIBERA COMMUNITY SELF HELP PROGRAMME, KENYA**

**JUDGMENT**

1. The *ex-parte* applicant (“the applicant”) is a duly registered Non-Governmental Organisation representing and assisting people living with and affected by HIV and Aids. It has moved the court by the Notice of Motion dated 6<sup>th</sup> December 2011 seeking the following reliefs:
  - a. *An order of prohibition to prohibit the 1<sup>st</sup> Respondent by himself, his agents, servants and/or employees or any person claiming under and/or from him from interfering with the Applicant’s quiet possession of its right to title over Land Reference Number 209/9313 from damaging, excavating, digging, constructing and/or dealing in any other manner whatsoever, and any part or portion*

- b. *An order of prohibition to prohibit the 2nd Respondent by himself, his agents, servants and/or employees or any person claiming under and/or from him from proceeding to issue any order or determine or deal in any other manner with the Applicant's quiet possession of its right to title over Land Reference Number 209/9313 (Part) or aid the commission of an offence of trespass and forcible entry*
  - c. *An order of Certiorari to bring before this Honourable Court directed to the High Court of Kenya, to quash the decision of the 1<sup>st</sup> respondent to forcefully dispose and compulsorily acquire the Applicant right to quiet possession of its right to title over Land Reference Number 209/9313(Part)*
  - d. *That the costs of this application be provided for.*
2. Trouble started about August 2011 when to the applicant's surprise they learnt that the District Commissioner had pulled down the fence, cut several trees and destroyed other property on the suit property. The applicant has constructed a permanent clinic, counselling unit and primary school on the property which serves the area around the Kibera slums.
  3. The respondent does not dispute that the property was allocated to the applicant. In fact, the initial developments were approved by the Local Development Committee. What appears to be in dispute is that other developments other than those that were approved by the Local Committee were executed. In his deposition of 8<sup>th</sup> February 2012, the District Commissioner, Omar Beja stated that the applicant was well aware that the land in question was public land reserved for a chief's camp. Further, that the applicant had gone as far as constructing a permanent multi-purpose clinic without the consent of the Locational Development Committee contrary to earlier agreement that construction of permanent structure would be subject to approval by the District Development Committee.
  4. I am satisfied that on the basis of the material before me that the applicant had a legitimate expectation that the title would be processed and the allocation completed by issuance of a title deed. The applicant was legally issued with a Letter of Allotment by the Commissioner of Lands dated 4<sup>th</sup> July 2011 of part of LR No. 209/9313 and has since obtained requisite approvals from the Commissioner of Lands and is now awaiting issuance of title which is likely to come out any time soon. I also note that the approval was advertised in the Kenya Gazette on 11<sup>th</sup> June 2008 for the Completion of the Development Plan in accordance with the ***Physical Planning Act***.
  5. There must be certainty and predictability in executive actions. In all fairness and justice, this court would not allow the applicant's reasonable expectation over title to property and which has already accrued to be whimsically taken away without due process. In ***Keroche Industries Ltd v Kenya Revenue Authority and others HC Misc. Civil Application No. 1214 of 2004 (Unreported)*** the Court observed that, *"...legitimate expectation is based not only on ensuring that legitimate expectations by the parties are not thwarted, but on a higher public interest beneficial to all...which is, the value of the need of holding authorities to promises and practices they have made and acted on and by so doing upholding responsible public administration. This in turn enables people affected to plan their lives with a sense of certainty, trust, reasonableness and reasonable expectation...legitimate expectation arises for example where a member of the public as a result of a promise or other conduct expects that he will be treated in one way and the public body wishes to treat him or her in a different way...public authorities must be held to their practices and promises by the courts and the only exception is where a public authority has a sufficient overriding interest to justify a departure from what has been previously promised."*
  6. It was therefore not in order for the District Commissioner, to take the law in his own hands to demolish the applicant's fence and uproot trees even if he believed that the applicant was not on the property lawfully. As the court observed in ***Kuria Greens v The Registrar of Titles & Another [2011] eKLR***, *"Whereas unlawful acquisition of public property must be lawfully resisted, the court will be failing in its constitutional duties if it failed to protect citizens from unlawful acquisition of their property by the State through unlawful decisions taken by public officers. If the respondents were satisfied that the suit land had been unlawfully alienated and that it was in*

*the interest of public that the land reverts to the State or to the Kenya Agricultural Research Institute, appropriate notice ought to have been given to the petitioner and thereafter the respondents 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 its determination, one way or the other."*

7. I am aware and I take judicial notice of the fact that during the pendency of these proceedings, several statutory enactments dealing with law have been passed pursuant to the Constitution and which have adjusted the landscape of land management in the country. Counsel representing both sides in the matter, agree that there have been negotiations and discussions in the matter but due to bureaucratic bottlenecks, the matter has not been resolved. I note the State and its agencies are obliged, under **Article 47(1)** of the Constitution, to deal with administrative matters in an expeditious, efficient, lawful, reasonable and procedurally fair manner. The applicant's case cannot be held in abeyance for an unreasonably long time with a response as to the position. Likewise the Court under **Article 159(2)** is supposed to ensure that justice is not delayed and that alternative dispute resolution is promoted.
8. Taking what I have stated into account and to ensure that the matter is resolved once and for all, I direct the National Land Commission in conjunction with the Ministry of Land within **45 days** to resolve the applicant's allocation.
9. The matter shall be mentioned on **20<sup>th</sup> March 2014** for final orders in the matter.

**DATED** and **DELIVERED** at **NAIROBI** this 23<sup>rd</sup> January 2014

**D.S. MAJANJA**

**JUDGE**

Mr Mbeya instructed by Mugoye and Associates for the *ex-parte* applicant.

Ms Makori, Litigation Counsel, instructed by the State Law Office for the respondents.