



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KISUMU**

**ELC PETITION CASE NO. 3 OF 2020**

**(FORMERLY KISUMU HIGH COURT PETITION NO. 11 OF 2019)**

**IN THE MATTER OF THE CONTRAVENTION OF ARTICLES 10, 23,**

**27, 35, 47, 50, 67 (e), AND 159 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE NATIONAL LAND COMMISSION ACT NO. 5 OF 2012**

**AND**

**IN MATTER OF GAZETTE NOTICE NO. 6862 DATED 17<sup>TH</sup> JULY 2017**

**EMILY AWUOR OMBOTO.....PETITIONER**

**VERSUS**

**NATIONAL LAND COMMISSION.....RESPONDENT**

**JUDGMENT**

Emily Awuor Omboto, (hereinafter referred to as the Petitioner) has come to this court against the National Land Commission stating that all material times she was the registered proprietor of the leasehold interest in all that parcel of land known as KISUMU MUNICIPALITY/BLOCK 8/480 (hereinafter ‘the suit property’) and was issued with a certificate of lease on the 17<sup>th</sup> day of July 2006.

That the suit property was as a result of sub-division of KISUMU MUNICIPALITY/BLOCK 8/313 which was at the material time registered in the name of Benelon Enterprises Limited. The sub-division generated three titles being Land Reference Nos. KISUMU MUNICIPALITY/BLOCK 8/478, KISUMU MUNICIPALITY/BLOCK 8/479 and the suit property with each being issued with a certificate of lease.

That after the sub-division and registration of the three resultant titles afore-stated, Land Reference Nos. KISUMU MUNICIPALITY/BLOCK 8/478, KISUMU MUNICIPALITY/BLOCK 8/479 were registered in the name of COMILLA CONSTRUCTION COMPANY LTD while the suit property was registered to the Petitioner.

That the petitioner has been in lawful occupation of the suit property, peacefully and enjoying quiet possession of the same until Friday 16<sup>th</sup> September 2016 when she saw a notice by the National Land Commission (‘the Respondent’) in the Daily Nation newspaper requiring her attendance at the hearing on the 5<sup>th</sup> day of October 2016 in Kisumu.

That the Petitioner was neither furnished with the details of the complaint against her before the Respondent nor granted access to the evidence that the Respondent proposed to rely on before or at the hearing. The Respondent did not conduct any hearing at all and the Petitioner was not accorded a right to a fair hearing and this occasioned great injustice to the Petitioner.

That vide gazette notice No. 6862 dated 17<sup>th</sup> July 2017, the Respondent published a gazette notice to the effect that the Petitioner’s title being KISUMU MUNICIPALITY/BLOCK 8/480 is revoked on the basis of illegal allocations on public utility land reserved for Government housing.

That the Petitioner was discriminated during the whole process and was not accorded an opportunity to defend herself. The Petitioner found it strange that only her title being KISUMU MUNICIPALITY/BLOCK 8/480 was the only title cancelled leaving out titles KISUMU MUNICIPALITY/BLOCK 8/478 and KISUMU MUNICIPALITY/BLOCK 8/479 which all titles were as a result of the sub-division of KISUMU MUNICIPALITY/BLOCK 8/313. The actions, findings and determination in revoking the title of the Petitioner selectively by the National Land Commission were in breach of Article 27 of the constitution of the Republic of Kenya 2010 hence occasioning discrimination against the Petitioner.

That the process that the Respondent followed to arrive at the decision that was made was not only malicious, discriminative, selective and one sided but was also made with a predetermined mind to strip, deny and cause the Petitioner to lose the valuable parcel of land that she lawfully owns and is in occupation of.

That the actions of the Respondent sought to be impugned herein were unlawful and procedurally unfair contrary to the expectation of the Petitioner and the Kenya public contrary to the Article 47 of the Constitution.

That the actions of the Respondent are in breach of the Petitioner's rights as enshrined in Article 40 (3) of the Constitution.

The actions of the Respondent have caused the Petitioner to lose title to the property that she lawfully acquired and legally possesses and also caused her to suffer great damage and loss as a result of the actions of the Respondent.

The Petitioner is at risk of losing her valuable asset KISUMU MUNICIPALITY/BLOCK 8/480 which she acquired for valuable consideration.

The petitioner was discriminated against by the actions of the Respondent and as a result, her rights as enshrined in Chapter 4 of the constitution have been violated and infringed upon by the Respondent as a result of its selective and biased application of the law.

The Petitioner seeks relief that:-

**a) A declaration that the Petitioner was discriminated against by the actions of the Respondent by revoking her title to Land Reference No. KISUMU MUNICIPALITY/BLOCK 8/480.**

**b) A declaration that the process by which the Respondent made a decision to revoke the Petitioner's title to the suit property was unconstitutional and unlawful and that Gazette Notice No. 6862 dated 17<sup>th</sup> July 2017 is null and void insofar as it relates to Land Reference No. KISUMU MUNICIPALITY/BLOCK 8/480.**

**c) An order quashing the Respondent's direction to the Chief Land Registrar to revoke the Petitioner's title to Land Reference No. KISUMU MUNICIPALITY/BLOCK 8/480.**

**d) Costs of this petition be paid by the Respondent.**

In the supporting affidavit, the petitioner reiterates the contents of the petition. The Respondent did not file any response.

I do find that the petitioner is the registered proprietor of the leasehold interest in the suit property known as KISUMU MUNICIPALITY/BLOCK 8/480. On 16/9/2016, she was invited to attend a sitting of the National Land Commission at Tom Mboya Labour College in Kisumu on 3/10/2016 for a public hearing in respect of the property. She was not furnished with the details of the complaint. She later learnt that the Respondent directed the Chief Land Registrar to revoke the Petitioner's title. The National Land Commission has not responded to the allegation and submissions.

I do find that the respondent breached the provisions of Article 47 (1) of the Constitution of Kenya by failing to provide administrative action by failing to accord the petitioner a fair hearing.

Article 47 (1) of the Constitution provides:

**“(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”**

Section 4 of the fair administrative Actions Act provides that **where an action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-**

**(a) prior and adequate notice of the nature and reasons for the proposed administrative action;**

**(b) an opportunity to be heard and to make representations in that regard; (c) notice of a right to a review or internal appeal against an administrative decision, where applicable;**

**(d) a statement of reasons pursuant to section 6;**

**(e) notice of the right to legal representation, where applicable; (0 notice of the right to cross-examine or where applicable; or**

**(g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.**

The Respondent did not file a reply to deny allegations against it.

This court further finds that the National Land Commission had no powers to direct the Chief Land Registrar to revoke title. The power to revoke title can only be exercised by the court. I do not find any evidence of discrimination. The upshot of the above I grant a **declaration that the process by which the Respondent made a decision to revoke the Petitioner's title to the suit property was unconstitutional and unlawful and that Gazette Notice No. 6862 dated 17<sup>th</sup> July 2017 is null and void insofar as it relates to Land Reference No. KISUMU MUNICIPALITY/BLOCK 8/480. Furthermore, I do grant an order quashing the Respondent's direction to the Chief Land Registrar to revoke the Petitioner's title to Land Reference No. KISUMU MUNICIPALITY/BLOCK 8/480. Costs of this petition be paid by the Respondent.** Orders accordingly.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 23<sup>rd</sup> DAY OF MARCH, 2022**

**ANTONY OMBWAYO**

**JUDGE**

*This Judgment has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020.*