



IN THE HIGH COURT AT NAIROBI

MILIMANI LAW COURTS

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 386 OF 2013

BETWEEN

JOSEPH NDUNGU NJAU.....PETITIONER

AND

THE CHIEF REGISTRAR OF LANDS.....1ST RESPONDENT

THE ATTORNEY GENERAL..... 2ND RESPONDENT

MARGARET MAGIRI MBUKI.....3RD RESPONDENT

JUDGMENT

1. By the petition dated 25th July 2013, the petitioner moved the court for the following orders;
 - i. *Orders of certiorari to be issued forthwith to bring to this Honourable Court for purposes of quashing the decision of the 1st respondent which cancelled the petitioner's certificate of lease in respect of LR NO. NAIROBI/BLOCK 63/399 while Court of Appeal proceedings being Civil Appeal No. 60 of 2009 is still pending a determination on merit as between the petitioner and the 3rd respondent and the decision of the Registrar of Lands being made contrary to rules of natural justice.*
 - ii. *THAT further or in the alternative orders of mandamus or a mandatory injunction be issued and directed at the 1st and 2nd respondents to compel them to reinstate the petitioners certificate of lease forthwith pending the hearing and determination on merit of Court of Appeal proceedings being Civil Appeal No. 69 of 2009 as between the above mentioned disputing parties.*
 - iii. *THAT pending the hearing and determination of Court of Appeal Civil Appeal No. 69 of 2009 the respondents herein and their agents be compelled by a mandatory injunction to give the petitioner and his Tenants quiet and peaceful possession devoid of any interferences whatsoever in respect of the Land Reference Number NAIROBI/BLOCK 63/399.*
 - iv. *General and exemplary damages be assessed and awarded to the petitioner forthwith following violations of his alleged fundamental Rights by the respondents.*
 - v. *Cost of the suit and interests thereon.*
2. It is not in dispute that LR No. NAIROBI/BLOCK 63/399 ("the suit property") has been the subject of a dispute as to ownership between the petitioner and the 3rd respondent. The petitioner

filed **Nairobi HC ELC No. 30 of 2008 (previously HCCC 1032 of 2005)** against the 3rd respondent seeking, *inter alia*, a declaration that he was entitled to the suit property. The 3rd respondent denied that the petitioner was entitled to the suit property. She filed a counterclaim together with her defence seeking, *inter alia*, an order that the petitioner vacates the suit property and he be ordered to demolish any structures on the property. The petitioner's suit was struck out by Ang'awa J., on 22nd March 2007 culminating in an appeal in the Court of Appeal; **Nairobi Civil Appeal No. 69 of 2009**. The petitioner contends that the appeal is pending and the counterclaim in the High Court suit is still alive. The petitioner argues that these cases will determine the issue of ownership of the suit property.

3. The main issue for determination in this matter arises from a decision of the Chief Land Registrar dated 11th September 2012 in which all register entries in favour of the petitioner in respect of the suit property were cancelled under **section 79** of the **Land Registration Act** and the land register rectified by expunging the record of the petitioner and maintaining it in favour of the 3rd respondent. According to the Registrar, the proceedings leading to the cancellation were commenced by a complaint lodged by the 3rd respondent by a letter received by the Registrar on 20th June 2011. The Land Registrar, Benard Kipkemoi Leitich, in his deposition sworn on 16th December 2013, states that he summoned the parties to appear before him and when the petitioner did not appear to answer the complaint he made the determination in favour of the 3rd respondent.
4. The complaint by the petitioner is that the decision by the Registrar was made without jurisdiction and made without giving the petitioner the opportunity to be heard. The petitioner also avers that the decision was made without having regard to the pending court cases. Mr Ngoge, counsel for the petitioner argued that the petitioner's fundamental rights under **Article 47(1)** of the Constitution were violated.
5. Mr Ngumi, learned counsel for the Attorney General, concedes that the Registrar should have heard the matter in view of the pending appeal case as there was clearly a dispute in court as to ownership. Ms Kanini, counsel for the 3rd respondent, concedes that the Registrar had no jurisdiction to issue the orders cancelling the entries in the register and that therefore the court may quash the said decision. However, she submits that in view of the existing Court of Appeal case, the court should not issue prayers (ii), (iii) and (iv) of the petition.
6. I am satisfied that the Registrar could not cancel the entries in the title to the suit property in view of **Nairobi Civil Appeal No. 60 of 2009** which would have an effect on the determination of the ownership of the suit property. I also agree with Ms Kanini that the court cannot deal with the other reliefs as they are directly affected by the Court of Appeal matter.
7. In the circumstances, the order that commends itself to the court is as follows;
 - a. **The decision of the Chief Land Registrar dated 11th September 2012 cancelling the Certificate of Lease in favour of Joseph Ndungu Njau respect of LR No. NAIROBI/BLOCK 63/399 be and is hereby quashed.**
 - b. **There shall be no order as to costs.**

DATED and DELIVERED at NAIROBI this 2nd day of April 2014.

D.S. MAJANJA

JUDGE

Mr Ngoge instructed by O.P. Ngoge and Associates Advocates for the petitioner.

Mr Ngumi, Litigation Counsel, instructed by the State Law Office for the 1st and 2nd respondents.

Ms Kanini instructed by Kyalo and Associates Advocates for the 3rd respondent.