



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Judicial Review 39 of 2011

REPUBLIC.....APPLICANT

VERSUS

PRINCIPAL REGISTRAR OF GOVERNMENT LANDS.....1ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT

AND

WAYMAX COMPANY LIMITED.....1ST INTERESTED PARTY

UGANDA HIGH COMMISSION.....2ND INTERESTED PARTY

EXPARTE

MFI SOLUTIONS LIMITED

J U D G M E N T

Pursuant to leave granted by this court on 6th April 2011, the Exparte Applicant herein MFI Office Solutions Limited (*hereinafter referred to as the Applicant*) commenced judicial review proceedings against the Principal Registrar of Government Lands (1st Respondent) and the Hon. Attorney General (2nd Respondent) by way of a Notice of Motion dated 19th April 2011 and filed in court on 20th April 2011 seeking the following orders:-

- 1) An Order of CERTIORARI to bring into this Honourable Court to be quashed the decision of the 1st Respondent contained in a letter dated 25th February 2011 purporting to cancel and expunge entries from the Register of Government Lands relating to land belonging to the Exparte Applicant known as

LR.No.209/359/16.

- 2) An Order of PROHIBITION directed to the 1st Respondent, by himself, his servants, agents, and/or officers from expunging, cancelling and/or interfering with any entry in the Register of Government Lands relating to Land known as LR.No.209/359/16.
- 3) An Order of PROHIBITION directed to Divisional Criminal Investigation Department Officer at the Kilimani Police Station, by himself, his servants, agents and/or officers from interfering in any way with the Applicant's property namely LR.209/359/16.
- 4) An Order of MANDAMUS to compel the 1st Respondent to restore in the Register of Government Lands entries relating to the Applicant's ownership of land known as LR.No.209/359/16.
- 5) THAT costs of and incidental to this Application be provided for.
- 6) Such further reliefs that this Honourable Court may deem fit and expedient to grant.

The application is supported by a statutory statement dated 6th April 2011, the supporting and verifying affidavits sworn on 6th April 2011 by Arif Madhani, the Managing Director of the Applicant and annexures to the supporting affidavit.

The application is premised on several grounds chief among them being that:

1. The Applicant is the legal registered owner of the suit land known as L.R. No.209/359/16.
2. The Applicant on the 5th March 2010 entered into a sale agreement with the Interested Party, Waymax Company Limited for the purchase of the suit land.
3. Before the Applicant entered into the sale agreement, official searches were conducted at the Lands Registry on the 9th December 2009 and 26th February 2010. They both confirmed that the suit property was registered in the name of Waymax Company Limited.
4. The Applicant agreed to purchase the said land from Waymax Company Ltd, the Interested Party herein, having paid a consideration of Twenty Seven Million Kenya Shillings and the requisite stamp duty, as required by law, in respect of the suit property.
5. After the purchase of the suit property and registration, the Applicant conducted another official search on 11th May 2010 at the Land's registry which confirmed that the suit property was duly registered in the name of the Applicant.
6. The Applicant has been in possession of the suit property since May 2010 without any interruption.
7. On 25th February 2011, the 1st Respondent, wrote a letter to the Divisional Criminal Investigation Department Officer at Kilimani Police Station, stating that the conveyance dated 24th January 2011 between Ugandan Airlines Corporation and Waymax Company Limited was purportedly a fraud and hence no good title passed to the Applicant, MFI Office Solutions Limited.
8. THAT in his letter, the 1st Respondent further stated that he has purportedly expunged from the Register of Government of Lands, entries relating to the Applicant's ownership of the suit property and requesting that the original documents be returned to him.
9. The suit property is currently the subject matter of Civil Case No. 578 of 2010 between **Landlords Limited & Roger Hanns Kiyonga Ddungu -Vs- Waymax Company Limited, MFI Solutions Limited**

& the Attorney General.

10. The 1st Respondent's decision to expunge and cancel the entries from the register is ultra vires the functions of the Principal Registrar of Government Lands as provided under Section 97 of the Government Lands Act.

11. The 1st Respondent in exercising his quasi-judicial functions as required by the Government Lands Act failed to adhere to the Rules of Natural Justice.

12. The actions of the 1st Respondent are unconstitutional and a violation of the Applicant's right to property.

The background against which the application was filed is that the Applicant purchased land known as L.R. No.209/359/16 (the suit property) from Waymax Company Ltd (1st Interested Party) for a consideration of Twenty-Seven Million Kenya Shillings, paid the requisite stamp duty as required by law and had an indenture of conveyance in respect of the suit property registered in its favour on 3rd May 2010.

This is evidenced by a copy of the sale agreement and a pay-in slip issued by the Kenya Revenue Authority (**Form SDI**) annexed to the Applicant's supporting affidavit and marked as exhibit "**AM2**" showing the amount of stamp duty paid in respect of the sale transaction. A copy of the indenture of conveyance registered in the Applicant's favour is also annexed and marked as exhibit "**AM1**".

The Applicant states that prior to executing the agreement for the sale of the suit property, it had exercised due diligence by conducting official searches at the Land's Registry on 9th December 2009 and 26th February 2010 which confirmed that the suit property was registered in the name of the 1st Interested Party as shown in the copies of certificates of official search marked as exhibits "**AM3**".

It is the Applicant's case that after purchasing the suit property and effecting registration in its favour, it conducted a post completion search at the Land's Registry on 11th May 2010 which confirmed that the suit property had been duly registered in its name – see annexure marked "**AM5**".

On 25th February 2011, in response to a letter dated 26th August 2010 which was not copied or forwarded to the Applicant, the 1st Respondent wrote a letter to the Divisional Criminal Investigation Department Officer at Kilimani Police Station which was copied to the Applicant stating that investigations had revealed that the conveyance between Ugandan Airlines Corporation and Waymax Company Ltd dated 24th January 2001 was a fraud and that therefore no good title passed to the Applicant after purchasing the suit property from the 1st Interested Party.

In the same letter, the 1st Respondent indicated that he had expunged from the Register of Government Lands (the register) all entries relating to the Applicant's ownership of the suit property reverting its proprietorship to Ugandan Airlines Limited.

The Applicant was aggrieved by this decision by the 1st Respondent and this is what triggered the filing of the current application.

The Applicant contends that the decision of the 1st Respondent to expunge entries relating to its ownership of the suit property from the register was made without jurisdiction or in the alternative in excess of the jurisdiction conferred on the 1st Respondent by the Government Lands Act.

It is the Applicant's further contention that the said decision was illegal as it was unconstitutional in so far as it amounted to a violation of the Applicant's right to property. The Applicant stated that it had not been involved in the investigations alluded to by the 1st Respondent in the letter dated 25th February 2011

and that the 1st Respondent's unilateral decision to expunge its name as owner of the suit property from the register violated the rules of natural justice. For the foregoing reasons, the Applicant urged the court to allow the application and issue orders as prayed.

The application is opposed by both the Respondents and the 2nd Interested Party. The 1st Interested Party supported the application.

The 1st and 2nd Respondent opposed the motion through a replying affidavit sworn by Charles Kipkurui Ngetich. Mr. Ngetich deposed that the purported conveyance of the suit property from Ugandan Airlines Corporation to Waymax Company Ltd on 24th January 2001 was fraudulent and that Waymax Company Ltd did not have a good title to pass to MFI Solutions when it purported to transfer the suit property to the Applicant through the indenture of conveyance dated 20th April 2010.

The deponent averred that the fraud concerning the suit property was reported to the Divisional Criminal Investigation Officer (DCIO) Kilimani Police Station who in turn wrote letter dated 26th August 2010 addressed to the 1st Respondent seeking information regarding the ownership of the suit property. The 1st Respondent responded by letter dated 25th February 2001 which contained the impugned decision.

It is the Respondent's case that the 1st Respondent had established after investigations that the conveyance of the suit property involved fraud and forgery and that therefore the 1st Respondent was empowered by Section 121(1) of the Government Lands Act to withdraw from the register by way of cancellation entries concerning ownership of the suit property.

The Respondent's further claimed that under Section 126 of the Government Lands Act (the Act), the Registrar is not liable for any action done in good faith and that in any event, the Applicant's proprietary rights to the suit property did not enjoy constitutional protection by virtue of Article 40(6) of the Constitution which provided that the right to acquire and own property did not extend to property found to have been unlawfully acquired.

In opposing the application, the 2nd Interested Party filed an affidavit sworn by Ambassador Emmanuel B.P. Hatega, the Ambassador to the Republic of Uganda in Kenya. The Ambassador deposed that he had received information that the Ugandan Airlines Corporation (under receivership) had sold the suit property to Landlords Limited which in turn sold the same property to Rogers Hanns Kiyonga Ddungu through a competitive tender process.

In Paragraph 3, the deponent stated that in the Year 2010, it came to the attention of Uganda High Commission that one of the assets of Ugandan Airlines Corporation, the suit property had been fraudulently transferred to a company known as Waymax Company Ltd.

He did not however disclose the source of his information or the details relating to the alleged fraudulent transfer of the suit property to the 1st Interested Party.

According to the 2nd Interested Party, the Applicant's application was unmerited as in its view, the 1st Respondent had power and authority under Section 65 of the Registration of Titles Act to cancel entries and revoke title to land if he was satisfied that the said title had been illegally or unlawfully acquired.

To further buttress their respective positions in this matter, parties filed elaborate written submissions which they orally highlighted in court on 8th October 2012.

In support of the Applicant's case, Mr. Kilonzo Junior learned counsel for the Applicant submitted that the Applicant was lawfully registered as owner of the suit property after presenting the indenture of conveyance and paying the requisite stamp duty and all registration fees which were accepted by the 1st Respondent. Mr. Kilonzo further submitted that the Applicant was an innocent purchaser for value without notice since prior to entering into the sale agreement that led to the conveyance of the suit

property to its name, it had conducted two official searches as required by Section 127 of the Government Lands Act which had revealed that the 1st Interested Party was the registered owner of the suit property.

It was further submitted on behalf of the Applicant that the 1st Respondent's decision to expunge entries relating to the Applicant's ownership of the suit property from the register was made without or in excess of his jurisdiction under Section 97 and Section 121 of the Act and that the said decision was for that reason null and void *abinitio*.

Counsel further argued that since the 1st Respondent made the challenged decision before giving the Applicant which was by then the registered owner of the suit property prior notice or an opportunity to state its case, the 1st Respondent violated the rules of natural justice. The Applicant urged the court to find that its application was merited and prayed that orders sought therein be allowed with costs.

In supporting the Applicant's case, the 1st Interested Party relied on the depositions made in the replying affidavit sworn on its behalf by Mr. Fredrick Kimemia Kimani one of its directors.

Mr. Oonge learned counsel for the 1st Interested Party in his submissions stated that the 1st Respondent's decision to expunge the Applicant's name and therefore alter the Register of Government Lands on unsubstantiated allegations of fraud was unlawful as it was made without following due process or any lawful process.

Mr. Oonge submitted that the due process of law which ought to have been followed in this case was an inquiry as stipulated under Section 121(1) of the Government Land's Act. Counsel invited the court to note that the 1st Respondent made the impugned decision which directly affected the 1st Interested Party and the Applicant's rights and interests in a prime property in Nairobi without giving either of them an opportunity to be heard to state their respective cases on the alleged fraudulent transactions involving the suit property. Mr. Oonge submitted that this amounted to a violation of the rules of natural justice which entitled this court to exercise its supervisory jurisdiction over the 1st Respondent by granting the orders sought by the Applicant.

In addition, Mr. Oonge asserted that the 1st Respondent's decision was made in an attempt to pre-empt adjudication of HCC.No.578 of 2010 involving the parties herein among others which raised issues of validity of title to the suit property and which was still pending determination by the court.

M/s Maari State Counsel representing the Respondents and Mr. Wambugu learned counsel for the 2nd Respondent took the position that the 1st Respondent acted within the law when he decided to expunge entries from the Register relating to the suit property.

M/s Maari submitted that Section 121(1) of the Act mandated the 1st Respondent to cancel or rectify entries in the register which appear to him to have been issued in error, wrongfully or fraudulently. According to the Respondents, the Registrar could do so on his own (*sui moto*) or after summoning the parties with the illegal or irregular documents.

The summoning of witnesses was discretionary and failure to summon witnesses was not a breach of the process. M/s Maari further argued that the cancellation of entries regarding the suit property was made in good faith and under Section 126 of the Act, the Registrar was not liable for any action done in good faith.

M/s Maari and Mr. Wambugu also contended that this case was not suitable for judicial review as it basically raised issues of ownership of the suit property which can only be conclusively determined in an ordinary civil suit where *viva voce* evidence on how parties acquired title to the suit property can be adduced which cannot be done in judicial review proceedings.

Having carefully considered and evaluated all the pleadings in this case, the submissions both oral and

written made by counsel on record for each of the parties and the authorities cited, I find that three main issues emerge for determination by this court which are the following:

1. Whether the 1st Respondent acted without or in excess of his jurisdiction under the law in purporting to expunge or cancel the Applicant's name from the Register of Government Lands relating to the suit property.
2. Whether in making the impugned decision, the 1st Respondent violated the rules of natural justice.
3. Whether the Applicant is entitled to the reliefs sought.

Before I proceed to consider and determine the issues raised in this matter, I think it is important to mention that the Government Lands Act Cap.280 Laws of Kenya which is the Law under which the Applicant had been registered as owner of the suit property has since been repealed by the Land Registration Act (Act. No.3 of 2012) alongside other laws in the previous land law regime but since the impugned decision was made when the said law was in force, any reference to the law in this judgment unless otherwise stated will be a reference to the Government Lands Act.

Having said that, let me also state that I propose to deal with all the three issues together since in my view they are interrelated.

Let me start by stating that I have carefully read through the Government Lands Act and I have not come across any provision which empowers the Registrar of Government Lands to unilaterally and on his own volition revoke a conveyance or expunge entries relating to ownership of land registered under the Act. This could perhaps explain why the 1st Respondent did not disclose in his letter of 25th February 2011 the law under which he had moved to expunge entries from the Register relating to the Applicant's ownership of the suit property.

In the said letter, the 1st Respondent did not only expunge the Applicant's name from the Register but also made a determination that the Applicant had not acquired good title to the suit property and that ownership of the property should revert to Ugandan Airlines Corporation.

In order to appreciate the full import of the decision challenged by the Applicant in this case, I think it is necessary to reproduce the letter containing the said decision which was authored by the 1st Respondent. The letter read as follows;

DEPARTMENT OF LANDS

P.O. BOX 30089

NAIROBI

Our Ref: GLA 15132

25th February, 2011

Divisional C.I.D. Officer, Kilimani

P.O. Box 19727
NAIROBI

Dear Sir,

RE: PARCEL OF LAND L.R. NO.209/359/16

Reference is made to your letter Ref.CID/4/4/1 VOL.V/273 dated 26th August, 2010.

The property has been subject to fraudulent transactions since 17th July, 2007 when a company named **Waymax Company Limited** purportedly conveyed (transferred) to itself the demised parcel from **Ugandan Airlines Corporation**. **Waymax Company Limited** then proceeded to convey the property to **MFI Office Solutions** on 3rd May, 2010.

Our investigations have revealed that the conveyance dated 24th January, 2001 between **Ugandan Airlines Corporation** to **Waymax Company Limited** was a fraud and consequently there was no good title to be conveyed to **MFI Office Solutions**.

In the circumstances, I have today ordered the expunging from the register the fraudulent entries thereby reverting the proprietorship to **Ugandan Airlines Limited**.

By a copy of this letter **MFI Solutions** is directed to forward to this office all the original documents in relation to the said property and all other writings and documents in their custody for cancellation as they are no longer evidence to ownership of the within written land.

Yours faithfully
C.W. NGATIA

PRINCIPAL REGISTRAR OF GOVERNMENT LANDS

A reading of the letter reveals that the 1st Respondent did not only unilaterally expunge records showing that the Applicant was the registered owner of the suit property but also determined that the Applicant was not the rightful owner of the property and that Uganda Airlines Corporation ought to be registered as the legal owner of the property.

I take the position that the 1st Respondent had no legal mandate or jurisdiction to determine the issue of ownership of the suit property. This was not one of the functions of his office. The functions of the 1st Respondent are spelt out in Section 97 of the Act which states as follows:

“The Principal Registrar shall keep a register, to be called the Register of Government Lands, and shall bind up therein every document delivered to him under Section 95, and each conveyance, lease or licence shall constitute a separate folio of the register, and the Principal Registrar shall cause to be recorded therein the particulars of every document, dealing and other matters by this Act required to be registered or entered in the register affecting the land included under each conveyance, lease or licence”.

In my view, the 1st Respondent was only legally mandated to maintain a register documenting all transactions involving or affecting land registered under the Act or to rectify or cancel entries in accordance with the provisions of Section 121(1) of the Act but it was not within his mandate to determine ownership of registered land. Issues of ownership can only be determined by the High Court in the exercise of its civil jurisdiction. However, once such a determination has been made by the High Court confirming which person owned land registered under the Act, Section 106 of the Act requires the 1st Respondent to make entries in the Register in compliance with the court order.

In this case, in making a determination that it is Ugandan Airlines Corporation that was the owner of the suit property and not the Applicant, the 1st Respondent acted without jurisdiction and attempted to usurp powers only vested in the High Court of Kenya.

Turning now to the Respondent's and 2nd Interested Party's submission that the 1st Respondent acted within the law in expunging entries relating to the suit property from the Register, I am persuaded to accept the Applicant's and 1st Interested Party's contention that the 1st Respondent's decision was ultra vires his powers under Section 121(1) of the Act and I hereby make a finding to that effect.

I make this finding for the following reasons:

Firstly, Section 121(1) of the Act prescribes a procedure which the Registrar must follow in order to lawfully withdraw any document or entry from the Register whether by cancellation or otherwise.

Section 121(1) states as follows:

“The registrar may at any time, after such inquiry and notices, if any, as he may consider proper, and upon production of such evidence as may be prescribed or as he may deem necessary, withdraw from the register by cancellation or otherwise any document or entry which he is satisfied has determined or ceased or been discharged, or for any other reason no longer affects or relates to land registered under this part”.

It is clear from this section that the 1st Respondent could only order cancellation of entries relating to the suit property from the Register after conducting an inquiry and serving notices if necessary on the affected parties to state their position on the matter under consideration. The purpose of the inquiry was to enable the Registrar to gather evidence on the basis of which he could determine, in his discretion whether cancellation of documents or entries in the register was necessary.

Section 122 of the Act gives the Registrar powers to cite and examine witnesses on oath or affirmation and to order production of documents from persons having custody of the same in the course of the inquiry contemplated by Section 121 (1) of the Act.

In my view, the requirement of conducting an inquiry by the Registrar before expunging entries in the Register is mandatory and not discretionary as submitted by the Respondents. The only discretion given to the Registrar in the matter is whether to serve notices on the affected parties or to summon them as witnesses.

In this case, it is the Applicant's and 1st Interested Party's case that the 1st Respondent did not conduct any inquiry before making his decision in the letter dated 25th February 2011 to remove their names from the Register in respect of the suit property. The Applicant and the 1st Interested Party claimed in their pleadings that they were not given prior notice of the Registrar's intention or given an opportunity to state their case before the impugned decision which directly affected their interests in the property was taken.

These averments by the Applicant and 1st Interested Party were not disputed by the Respondent's or the 2nd Interested Party. In law what is not disputed is deemed to be admitted. The Respondents did not also specifically deny that no inquiry was conducted in this case but in the letter of 25th February 2011, the 1st Respondent had claimed that investigations had been conducted by his office which revealed that the suit property had been the subject of fraudulent transactions since 17th July 2007 when the 1st Interested Party allegedly conveyed to itself the suit property. However, no evidence was availed to the court by the Respondents to prove that any investigations which may be taken to serve the same purpose as an inquiry were ever conducted in respect of the suit property before the 1st Respondent made the impugned decision. It appears to me that no such investigations took place because it is difficult to see how any investigation relating to the suit property could have been conducted without interviewing or involving the 1st Interested Party and the Applicant who ideally would have been the subject of such investigations considering that the allegations of fraud had been directed at the 1st interested party while the Applicant was by then the registered owner of the suit property and custodian of the documents of title.

In this case, I find that the 1st Respondent did not conduct any inquiry as required by Section 121(1) of the Act before expunging the entries relating to the ownership of the suit property by the Applicant from the Register.

By failing to follow the statutory procedure provided for the cancellation of entries from the Register and

unilaterally expunging entries relating to the Applicants ownership of the suit property, the 1st Respondent acted without jurisdiction and his decision was consequently unlawful and bad in law. It was a decision made ultra vires his powers under the law which made it null and void *abinitio* meaning that it had no legal effect.

A decision made without jurisdiction automatically attracts the intervention of this court by way of judicial review.

It has been argued that the 1st Respondent's decision was made in good faith and that under Section 126 of the Act, the Registrar was not liable for any action taken in good faith. I am unable to accept this submission by the Respondents. My view is that the 1st Respondent could not have made the impugned decision in good faith since he must have been aware of the Applicant's proprietary interest in the suit property having registered a conveyance in its favour yet he never consulted the Applicant or the 1st Interested Party to seek their views on the matter before he moved to make the impugned decision.

Secondly, the Registrar apparently made his decision arbitrarily since it does not appear to have been based on any evidence. The documentation availed by the 2nd Interested Party in its replying affidavit was obtained long after the Applicant commenced these proceedings and it could not have been in the Registrar's possession by the time he made his decision .

The purpose of judicial review is to ensure that public bodies and public servants like the 1st Respondent do not injure the rights of citizens by making decisions which are arbitrary or contrary to the law and which amount to abuse of their statutory powers.

Besides, it is also clear that the 1st Respondent also violated the cardinal principle of the rules of natural justice which requires that no man shall be condemned unheard. This is so because as stated earlier, it is not disputed that the 1st Respondent did not give the Applicant prior notice or an opportunity to state its case before making the impugned decision despite the fact that the decision directly affected the Applicant adversely. The rules of natural justice demand that all parties whose legal right or interest are likely to be affected by a decision must be accorded a fair hearing before such a decision is made. The right to a fair hearing which now enjoys constitutional protection (see Article 47(1) of the Constitution) requires that parties likely to be affected by an administrative decision are notified of the allegations against them and are given adequate opportunity to make their own representations on the matter before a final decision is made. In this case. the 1st Respondent made a final decision to expunge entries relating to the Applicant's ownership of the suit property before notifying it of the allegations of fraud surrounding the suit property and before giving it an opportunity to be heard on the same. The decision had the effect of arbitrarily depriving the Applicant of title to the suit property which constituted a violation of the Applicant's right to acquire and own property guaranteed under Article 40 of the Constitution of Kenya. It is my view that Article 40(6) has no application in this case since no finding has been made by a competent court that the Applicant had unlawfully acquired the suit property.

It is therefore very clear to me that the 1st Respondent's decision was not only made in contravention of the rules of natural justice but was also unconstitutional.

The law is that a decision made in violation of the rules of natural justice is unlawful and falls outside the jurisdiction of the decision maker. In this regard I wish to borrow the words of **L. Diplock in Attorney General -Vs- Ryath (1980) AC 718 at Page 730** which were adopted by this court (Omondi J) in **Fahim Yasin Twaha & Another -Vs- District Land Registrar Lamu [2011] eKLR (Misc. App. No.17 of 2010)** when he stated:

“It has long been settled, that a decision affecting the legal rights of an individual which is arrived at by procedure which offends against the principles of natural justice is outside the jurisdiction of the decision making authority”.

An order of certiorari issues to quash a decision which is made without jurisdiction or in contravention of

the rules of natural justice.

In view of the foregoing, I am satisfied that the Applicant has demonstrated that it is deserving of the order of **Certiorari** as sought in Prayer 1 and I hereby grant the said order in terms of prayer 1 .

As far as the orders of Prohibition sought in Prayer 2 and 3 are concerned, it is my view that the Applicant has not established sufficient basis to warrant the issuance of such orders. Judicial review orders are discretionary in nature and even where they are deserved, the court can nevertheless decline to grant them depending on the circumstances of each particular case.

Starting with the order of prohibition sought in Prayer 2, it is clear from the pleadings especially the depositions in the replying affidavit filed on behalf of the Respondents that this prayer has now been overtaken by events. The deponent clearly deposed at paragraph 8 that the Registrar had already cancelled the entries relating to the suit property by 5th December 2011 when the affidavit was sworn.

In the case of **Republic -Vs- Kenya National Examination Council Exparte Geoffrey Gathenji & 9 Others, C/Appeal No.266 of 1996**, the Court of Appeal held that the remedy of Prohibition looks into the future. It is only used to prohibit the making of contemplated illegal decisions and actions. It cannot be used to remedy past events or decisions.

Granting the order sought in Prayer 2 would therefore be an exercise in futility. The policy of the law is that courts should not issue orders in vain and consequently, I decline to grant an order of prohibition as sought in Prayer 2.

As for Prayer 3, the order sought seeks to prohibit the District Criminal Investigation Officer at the Kilimani Police Station, by himself, his servants, agents and/or officers from interfering in any way with the Applicant's property namely LR. No.209/359/16.

In my view, this prayer is framed in very vague and general terms as it is not clear which acts by the DCIO are sought to be prohibited. The form of interference sought to be prohibited is not disclosed. It is clear from the proceedings that the manner in which the 1st Interested Party acquired the suit property from Ugandan Airlines Corporation before selling it to the Applicant for a consideration of Kshs.27,000,000 is under investigation by the DCIO Kilimani. In the circumstances, the court must exercise caution not to grant orders which may be interpreted to mean that it had restrained the police from exercising their statutory mandate of investigating suspected criminal activities.

Taking everything into account and in the wider interests of justice, I decline to exercise my discretion in granting the Applicant the order of Prohibition as sought in Prayer 3.

In Prayer 4, the Applicant seeks an order of mandamus to compel the 1st Respondent to restore in the Register of Government Lands entries relating to the Applicant's ownership of the suit property.

The Applicant has produced evidence to show that it complied with all the legal requirements in the acquisition and registration of the suit property in its names in the register maintained by the 1st Respondent. The Applicant has also shown that no fraud was attributed to it in acquisition of the suit property and that if anything, it was a purchaser for value without notice.

It is important to note that all the allegations of fraud in relation to the suit property were attributed to the 1st Interested Party and not the Applicant. This court cannot however determine the issue of validity of the Applicant's title to the suit property since being a court exercising judicial review jurisdiction, its jurisdiction is only limited to examining the legality or otherwise of the process employed by the 1st Respondent in making the impugned decision. The issue of ownership can only be determined by this court in the exercise of its civil jurisdiction.

It was brought to the court's attention that there is a civil case pending in the High Court being

HCC.578 of 2010 involving the parties in this case which raises the issue of validity of title held by the Applicant to the suit property. However, since the Applicant has *prima facie* demonstrated that it had lawfully acquired the suit property before the 1st Respondent made his illegal decision, I find that it is entitled to be restored as owner of the suit property in the Register of Government Lands pending the final determination of the issue of ownership of the suit property in HCC.578 of 2010. I therefore allow an order of **Mandamus** as sought in Prayer 4.

The upshot of this judgment is that the Applicant's application is merited and it is hereby allowed in terms of Prayer 1 and 4. I however wish to clarify that in view of the pendency of HCC.578 of 2010 whose determination will resolve the dispute related to the ownership of the suit property, the orders of Certiorari and Mandamus issued in terms of Prayer 1 and Prayer 4 will only remain in force subject to the outcome of HCC.578 of 2010.

As costs follow the event, the Applicant is awarded costs of the application to be borne by the Respondents. It is so ordered.

Dated, Signed and Delivered by me at Nairobi this 30TH day of **JANUARY** 2013.

C. W. GITHUA
JUDGE

In the presence of:

Florence – Court Clerk

..... for Applicant

.....1st Respondent

.....2nd Respondent

.....1st Interested Party

.....2nd Interested Party