



Mulwa (Petitioning in the interest of members of Mitaboni Katani Company and/ or their respective nominees) v County Land Registrar, Machakos & 2 others; Mitaboni Katani Company Limited (Interested Party) (Environment & Land Petition E5 of 2020) [2022] KEELC 3641 (KLR) (30 May 2022) (Judgment)

Neutral citation: [2022] KEELC 3641 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND PETITION E5 OF 2020**

CA OCHIENG, J

MAY 30, 2022

**IN THE MATTER OF: ARTICLES 22(1), 40, 47, 159, 258
AND 162(2)(B) OF THE CONSTITUTION OF KENYA**

**IN THE MATTER OF: ALLEGED CONTRAVENTION
OF FUNDAMENTAL RIGHTS ENSHRINED IN**

THE CONSTITUTION OF KENYA, 2010

**IN THE MATTER OF: ENVIRONMENT AND
LAND COURT ACT SECTION 13(7) (B), (C) & (D)**

**IN THE MATTER OF: CONTRAVENTION OF RIGHTS TO PROPERTIES
IN RESPECT PLOTS ALLOTTED BY MITABONI KATANI COMPANY
LIMITED TO ITS MEMBERS AND/OR THEIR RESPECTIVE NOMINEES.**

AND

IN THE MATTER OF: THE DOCTRINE OF LEGITIMATE EXPECTATION

BETWEEN

**FRANCIS MWANZA MULWA PETITIONER
PETITIONING IN THE INTEREST OF MEMBERS OF MITABONI KATANI
COMPANY AND/OR THEIR RESPECTIVE NOMINEES**

AND

**COUNTY LAND REGISTRAR, MACHAKOS 1ST RESPONDENT
CHIEF LAND REGISTRAR 2ND RESPONDENT
ATTORNEY GENERAL 3RD RESPONDENT**

AND



JUDGMENT

1. By a Petition dated September 23, 2020, the petitioner prays for:-
 - a. A declaration that by virtue of corrigenda contained in Gazette Notice Number 2653 of March 23, 2007 Mitaboni Katani Company Limited is subsisting and that the 1st respondent is not entitled to decline registration of the transfers presented by the company on the ground that it was wound up.
 - b. An order of *certiorari* to issue to bring to this honourable court for the purpose of being quashed and forthwith quash the decisions of the 1st respondent refusing to register transfers in respect of title numbers Mavoko Town Block 2/12203 and Mavoko Town Block 2/12244.
 - c. An order of mandamus to issue to compel the 1st respondent to register transfers by Mitaboni Katani Company Limited as presented by your petitioner without considering the fact that the company was once struck off the register of companies.
 - d. An award of compensation and/or general and exemplary damages as against the respondents or any of them as will be found to have violated the fundamental rights of the petitioner and/or any member of Mitaboni Katani Company Limited.
 - e. Any other or further order that this honourable court may deem fit in the circumstances to grant.
 - f. Costs of this Petition.
2. The respondents though duly served failed to enter appearance and file a response to controvert the Petition.
3. The Petition was canvassed by way of written submissions.

Analysis and determination

4. Upon consideration of the Petition dated September 23, 2020 including the Supporting Affidavit as well as annexures thereon and the submissions, the only issue for determination is whether the petitioner is entitled to orders as sought in the Petition.
5. The petitioner in his submissions avers that he had legitimate expectation that the 1st respondent would register the transfer as his office had earlier registered over 200 transfers under similar circumstances. He contended that the 1st respondent was not justified in declining registration since the interested party had been reinstated in the companies register. Further, that the restoration of a company which has been struck off means it continues to be in existence as if it had not been dissolved or struck off the register. He reiterates that when the transfers were presented to the 1st respondent for registration the interested party was in existence as if it had not been struck off and the 1st respondent was not justified to decline registration on the ground that the company had been wound up. The Petition further submitted that the respondent has a duty to register the transfer presented to him provided such a transfer is properly executed as was the case herein. He insisted that he is entitled to the orders sought in the Petition, but left the question of compensation for the court's determination.



6. The petitioner herein represents the interests of a class of persons who were shareholders as well as some purchasers from members of plots allotted to them by the interested party herein. Further, that the interested party is a Public Limited Liability Company duly incorporated under the Companies Act (cap 486). He explains that in 2006 the company furnished to the petitioner, a list of transferees of various plots allotted to the said transferees. He confirms effecting transfers and obtaining title deeds for more than 200 plots in favour of shareholders and purchasers without any problem. He contends that the dispute herein arose when some of the shareholders, assigned their rights to respective purchasers for whom he also had their instructions to effect transfers in their favour. He was aware that the company had been struck off the register of companies vide gazette Notice no 3586 of July 10, 1998. Further, he confirms writing to the registrar of companies requesting him to reinstate the company if only for a limited purpose of enabling me to effect registration of transfers in respect of the plots allotted to the shareholders of the company. He states that following his said letter, the registrar of companies published a Gazette Notice no 2653 of March 23, 2007 by way of corrigenda reversing the earlier gazette notice. However, the 1st respondent has declined to register some of the transfers presented for registration citing grounds that the company had been wound up and that the transferees were not on the members' register. The petitioner insists that the 1st respondent was not entitled to decline registration and issuance of title deeds for any of the parcels on the ground that the company had been wound up and/or that the transferees were not in the members' register. Further, that the 1st respondent had no basis in law to refuse to register the transfers but was obliged to register them provided that the same had been executed under the company seal. The petitioner has written to the 1st and 2nd respondents about the issue but to no avail. He claims that the 1st respondent's acts of declining registration of the subject transfers were actuated by malice, spite, caprice, ill will or other improper motive and thus wrongful and contrary to the doctrine of legitimate expectation. Further, that the 1st respondent's refusal to register any of the transfers' is high landed and oppressive to the intending transferees and in contravention of article 40 of the Constitution of Kenya 2010.
7. From the averments in the Petition and supporting which were uncontroverted, it emerged that the although the interested party had been struck off the company's register vide gazette Notice Number 3586 of July 10, 1998, the petitioner applied for its restoration in order to enable him to apply for registration of the respective transfers in favour of the shareholders and/or their nominees, which culminated in the deletion of the Gazette Notice of July 10, 1998 through a corrigendum in Gazette Notice no 2653 of March 23, 2007.
8. The restoration of a company which has been struck off is governed by sections 914 and 915 of the Companies Act. Section 914 which provides *inter alia* that:
- “914(4) As soon as practicable after make a determination under subsection (1) (application for administrative restoration) the registrar shall:-
- a. Enter on the register a note of the date from which restoration of the company to the register takes effect and
- b. Publish the notice of restoration in the gazette.
- 915(1) Provides that “The effect of restoration of a company to the Register is that the company is taken to have continued in existence as if it had not been dissolved or struck off the Register.”
9. From a reading of the said legal provisions and based on the deletion of the gazette notice, I find that the interested party has hence continued to be in existence.



10. It is the petitioner's claim that despite this position the 1st respondent has since declined to effect registration of transfers presented to him, yet he had legitimate expectation that the 1st respondent ought to do so.
11. It is trite that a procedural legitimate expectation rests on the presumption that a public authority will follow a certain procedure in advance of a decision being taken. In the text book by; Pollard, Parpworth and Hughes writing at page 583 in the 4th edition of *Constitutional and Administrative Law: Text With Material* the learned authors posited as thus: -
- “Legitimate expectation refers to the principle of good administration or administrative fairness that, if a public authority leads a person or body to expect that the public authority will, in the future, continue to act in a way either in which it has regularly (or even always) acted in the past or on the basis of a past promise or statement which represents how it proposes to act, then, prima facie, the public authority should not, without an overriding reason in the public interest, resale from that representation and unilaterally cancel the expectation of the person or body that the state of affairs will continue. This is of particular importance if an individual has acted on the representation to his or her detriment.”
12. Also, in 4th Edition, Vol 1 (1) at page 151, paragraph 81 of *Halsbury's Laws of England*, legitimate expectation is outlined as follows: -
- “A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by authority, including an implied representation, or from consistent past practice.”
13. In the case of *National Director of Public Prosecutions v Phillips and Others*. [2002] (4) SA 60 (W) para 28, Hehe J, stated thus:
- “The law does not protect every expectation but only those which are ‘legitimate’. The requirements for legitimacy of the expectation, include the following:
- i. The representation underlying the expectation must be ‘clear, unambiguous and devoid of relevant qualification’;
 - ii. The expectation must be reasonable:
 - iii. The representation must have been induced by the decision-maker;
 - iv. The representation must be one which it was competent and lawful for the decision-maker to make without which the reliance cannot be legitimate.”
14. See the decision of *Jane Kiongo & 15 others v Laikipia University & 6 others* [2019] eKLR.
15. Based on the facts as presented while associating myself with the decisions I have cited, I note the 1st respondent despite being informed of the reinstatement of the interested party still failed to effect the transfer, yet all the relevant documents were presented to him. Further, despite having effected over 200 previous transfers and receiving correspondence from the petitioner dated February 7, 2020 and July 1, 2020 respectively, he still declined to effect registration of the transfers presented to him, yet he is legally mandated to do so. On the issue of damages or compensation, it is trite that the same has to be proved. However, in the absence of proof of the same, at this juncture, I am unable to award any compensation and/or general and exemplary damages as against the respondents.



16. In the circumstance, I find that the Petition dated September 23, 2020 is merited and must succeed. I will proceed to make the following final orders:
- i. A declaration be and is hereby issued that by virtue of corrigenda contained in Gazette Notice Number 2653 of March 23, 2007 Mitaboni Katani Company Limited is subsisting and that the 1st respondent is not entitled to decline registration of the transfers presented by the company on the ground that it was wound up.
 - ii. An order of *certiorari* be and is hereby quashing the decisions of the 1st respondent refusing to register transfers in respect of title numbers Mavoko Town Block 2/12203 and Mavoko Town Block 2/12244.
 - iii. An order of *mandamus* be and is hereby issued compelling the 1st respondent to register transfers by Mitaboni Katani Company Limited as presented by the petitioner without considering the fact that the company was once struck off the register of companies.
 - iv. The costs of this Petition are in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 30TH DAY OF MAY, 2022

CHRISTINE OCHIENG

JUDGE

