



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
PETITION NO 82 OF 2010

JOHN MUKORA WACHIHIPETITIONER

VERSUS

MINISTER FOR LANDS1ST RESPONDENT

COMMISSIONER FOR LANDS 2ND RESPONDENT

**THE CHIEF LAND REGISTRAR 3RD
RESPONDENT**

**DISTRICT LANDS REGISTRAR THIKA 4TH
RESPONDENT**

MINISTER FOR HOUSING 5TH RESPONDENT

P.S. MINISTER FOR HOUSING 6TH RESPONDENT

ATTORNEY GENERAL..... 7th RESPONDENT

AS CONSOLIDATED WITH

PETITION NOS. 83, 84, 85, 86, 87, 88, 89, 90 AND 92 OF 2010

JUDGMENT

Introduction

1. The consolidated petitions in this matter challenge the purported revocation of the petitioners' titles by the respondents by way of Gazette Notice No. **3449** dated **1st April 2010**. The Amended Petitions are dated 25th April 2012 and are expressed to be brought under section 84(1) and (2) of the former Constitution of Kenya and Articles 22(1), 23(1), and (3), 40, 47(1) and (2), 258(1), and 259(1)(a) and (b) of the Constitution of Kenya 2010.
2. Initially, the petitioners had moved to court following the publication of a notice in the local press by the 2nd respondent of the intention to revoke the titles allocated in Thika Municipality. They were granted interim orders on the 26th of March 2010. The petitioners then applied to amend their petitions in order to join the Registrar, Thika Lands Registry, who had, while the matters were pending in court, and after conservatory orders had been issued by this court but before

service, which was effected on 7th April 2010, revoked the petitioners' titles vide Gazette Notice No. 3449 of 1st April 2010. The petitioners also applied to join the Permanent Secretary, Ministry of Housing, as well as the Attorney General to the proceedings.

The Pleadings

3. In the Amended Petitions dated 25th April 2012, the petitioners seek:
 - i. *a declaration that the revocation of the titles to their respective properties as set out in their petitions is null and void for breach of rules of natural justice and section 70(c) of the former constitution;*
 - ii. *an order of Judicial Review to bring to the High Court and quash Gazette Notice No 3449 dated 1st April 2010 to the extent it revokes the title documents to their properties;*
 - iii. *a declaration that they are entitled to occupy, develop and use the property without interference from the respondents or their agents, subordinates or anybody else purporting to act for the Government;*
 - iv. *an order directed to the respondents to stop revocation, gazettelement, cancellation or other interference with the subject properties;*
 - v. *a declaration that any directive of the respondent intended to revoke or cancel their titles be declared unconstitutional, null and void;*
 - vi. *such other order as the court may deem just, and the costs of their respective petitions.*
4. No affidavit was filed in support of the Amended Petitions but all the petitioners filed further affidavits in response to the affidavit sworn in reply to the petitions by the 6th respondent.
5. In opposing the Petitions, the respondents have filed affidavits sworn by Mr. Tirop Kosgey, the Permanent Secretary, Ministry of Housing. The affidavits are essentially in the same terms for all the Petitions save for the property in dispute and various other facts pertinent thereto. None of the other respondents has filed any response to the Petitions or Amended Petitions.
6. The parties filed written submissions in respect of their respective positions on the matters in dispute. The petitioners filed written submissions dated 12th July 2010 and supplementary submissions dated 30th May 2012. The respondents also filed two sets of submissions dated 7th January 2013 and 15th March 2013. When the matter came up for hearing before me on 15th March 2013, both Mr. Kariuki for the petitioners and Ms. Wandia for the respondents indicated that they did not wish to make oral submissions on the matter and requested the court to render judgment on the basis of their pleadings and written submissions. Counsel for the petitioners also applied for one judgment to apply to all the petitions.

The Petitions

7. The gist of the petitioners' case is that the District land Registrar, Thika, had no authority to cancel the titles to their respective parcels of land by way of Gazette Notice. They impugn the Gazette Notice No. 3449 of 1st April 2010 and seek the orders which are set out above. Expressed to be issued under the provisions of the Constitution, the Government Lands Act, Cap 280 and the Trust Land Act, Cap 288, the Gazette Notice was in the following terms:

REVOCATION OF LAND TITLES

WHEREEAS the parcels of land whose details are described under the Schedule herein below were allocated and titles issued to private developers, it has come

to the notice of the government that the said parcels of land were reserved for public purposes under the relevant provisions of the Constitution of Kenya, the Government Lands Act (Cap 280) and the Trust land Act (Cap 288). The allocations were therefore illegal and unconstitutional.

Under the circumstances and in view of the public need and interest, the Government revokes all the said titles.

Gazette Notice No 2652 of 2010, is revoked.

PAMELA MUTEGI

District Land Registrar,

Thika District

8. The Gazette Notice then set out in the Schedule a lengthy list of properties whose titles were revoked by way of the Gazette Notice, among them the properties that the petitioners allege belong to them following allocations by the government.
9. While all the petitions and affidavits in support challenging the above Gazette Notice are worded in similar terms and allege essentially the same sets of facts, it is important to set out some basic facts related to each petition which are relevant to the determination of the matter before me.

Petition No. 82 of 2010

10. The petitioner, **Mr. John Mukora Wachih**, states that he is the lawful allottee of Thika Municipality/Block 7/147; that he was issued with a lease dated 24th August 2001 which was registered under Certificate of Lease dated 27th November 2002. In 2007, he was asked to pay some additional amount of Kshs 1,160,000 to validate the allocation, which he avers that he did.

Petition No 83 of 2010

11. The petitioner, **Nicholas Njau Njuguna**, has filed the petition as the legal representative of Charles Njuguna Njau. He alleges that the deceased was the lawful allottee of land parcel No. Thika Municipality Block 7/161 vide letter of allotment dated 25th February 1999; that the deceased developed the plot with a maisonette; and that the deceased had no title to the property and was awaiting issuance thereof.

Petition No 84 of 2010

12. The petitioner is **Grace Njeri Gichuhi Ngari T/A as Budget Collection Bureau**. She alleges that she is the lawful allottee of Thika Municipality/Block 7/131 vide letter of allotment dated 30th September 1998; that she was issued with a lease dated 24th July 2000 by the 2nd respondent for 99 years from 1st March 1998; that she paid Ksh65,910 in 2002 on the allegation that the land had been undervalued.

Petition No. 85 of 2010

13. **Paul Njogu Ndung'u** avers that he is the lawful allottee of Thika Municipality Block 7/167 which he was allotted vide letter of allotment dated 25th February 1999; that he paid an allocation fee of Ksh20,000/- on 5th August 2002 and all the requisite dues to the Ministry of Lands; that he paid Kshs 45,000/- on 30th March 2007 on the property as the market value. He does not have a title to the property.

Petition No. 86 of 2010

14. Johnson Mwangi Ciugu states that he is the lawful allottee of Thika Municipality/Block 7/162 which he states he was allotted by letter dated 25th March 1999 and that he paid a stand premium of Kshs10,000 on 26th March 2004. He states that in 2007, he was called upon to pay and duly, paid Kshs65,000 for the property. He states that he is the 'legally and constitutionally holder of letter of allotment' of the subject property. He, too, has no title to the property.

Petition No. 87 of 2010

15. Samuel Gichango Njuguna states that he is the lawful allottee of Thika Municipality/Block 7/169. He avers that he was issued with a lease dated 1st April 2008 for 99 years from 1st March 1999 which he has annexed to his affidavit in support of the petition. He avers that he was called upon in 2007 to pay additional amounts for the property which he did by paying Kshs100,000/-.

Petition No. 88 of 2010

16. Elijah Gathanga Ngugi avers that he is the lawful allottee of Thika Municipality/Block 7/168. He states that he trades as M.M Enterprises and that he was issued with a letter of allotment dated 25th February 1999. He states further that in 2007, the government called upon him to pay a further amount of Kshs60,000/- which he did. He does not have a title document for the property.

Petition No. 89 of 2010

17. Mr. Jacob Kariuki T/A Mkaki Enterprises alleges that he is the lawful allottee of Thika Municipality/Block 7/144 which he was allotted by letter of allotment dated 9th June 1999 and subsequently issued with a lease. He states that in 2007 he was called upon to pay a further amount of Kshs 112,000 to enable the allocation to be validated, and that he paid this amount. He avers that the respondents have issued notice to revoke his letter of allotment and lease. No lease or Certificate of Lease has been exhibited, but he has annexed to his affidavit a Certificate of Official Search dated 4th March 2010. The letter of allotment is issued to Mkaki Enterprises, a business name.

Petition No. 90 of 2010

18. Ms. Joan Wambui Mwangi states that she is the lawful allottee of Thika Municipality/Block 7/135. She avers that she was issued with a lease signed by the 2nd respondent on 22nd March, 2002 for 99 years, and a Certificate of Lease from the Thika Land Registry on 1st June 2002. She avers further that in 2007, the government asked her to pay an additional sum of Ksh200,000/- to enable the allocation to be validated, and that she paid this amount.

Petition No 92 of 2010

19. The Petitioner, **Fidelity Holdings Ltd**, states through its director, **Peter Kihara Mwaura**, that it is the lawful allottee of Thika Municipality/Block 7/152 duly allotted to it by letter of allotment dated 9th June 1999. Mr. Mwaura avers that the petitioner was issued with a lease on 24th August 2001 for a term of 99 years from 1st June 1999 and with a Certificate of Lease from the Thika Land Registry on 19th September 2001. He avers further that in 2007, the petitioner was required to pay Ksh250,000 in order for the allocation to be validated, which it did.

The Petitioners' Case

20. According to the petitioners, they are the owners of their respective properties which were allocated to them following applications that they made to the 2nd respondent to be allocated plots

at Thika. They assert that the Thika District Commissioner, who was also the Chairman of the plot allocation committee, confirmed to the 2nd respondent that there were ‘uncommitted plots’; that the 2nd respondent asked the District Physical Planning Officer Thika to prepare Part Development Plans (P.D.P) which the said officer did and forwarded to the 2nd respondent, and that the officer confirmed that the plots were vacant.

21. The petitioners contend that they were allocated plots after all the processes were undertaken and the government departments’ dues were paid. All the petitioners aver that they were subsequently issued with allotment letters and paid all the monies required to be paid, and they also paid Thika Municipal Council all the rates payable. They also assert that survey work was carried out and approved by the Director of Surveys and they were issued with leases, and subsequently, with certificates of lease from the Thika Land Registry.
22. The petitioners state that in 2007, a circular dated 24th January 2007 was issued by the Ministry of Lands seeking to validate the allocation and valuation of the plots under Thika Municipality. They state that they participated in the process of validation and were required to pay certain amounts to the government, which they did.
23. They state that they were thereafter shocked to see a press release attributed to the 1st respondent which was published in the local dailies directing the revocation of their titles. They assert that if implemented, the 1st respondent’s directive would deprive them of their property without compensation or due process and would be in breach of the provisions of the Registered Land Act, Cap 300, and section 70(c) and 75(1) of the former constitution as well as Article 40 and 47 of the Constitution. They also take issue with the decision to revoke the titles as it was made without giving them a hearing contrary to the rules of natural justice.

The Respondents’ Case

24. The respondents’ case is set out in the replying affidavits sworn on 2nd December 2012 by Mr. Tirop Kosgey, the Permanent Secretary, Ministry of Housing, and the respondents’ written submissions. Mr. Kosgey avers that the suit properties were developed with permanent government houses or hived off from parcels of land on which government houses had been developed; that they therefore fall within the mandate of the Ministry of Housing which has custody of the records for all government houses, and that he is therefore competent to make averments with regard to the petitioners’ claims.
25. The respondents point out that the petitioners have acknowledged in their Petitions and in the documents in support that the properties were developed with permanent government houses. In the case of Petition No. 82 of 2010, for instance, the respondents point out that at paragraph 5 of the Petition and exhibit “JM 19”, it is admitted that land parcel No. Thika Municipality/Block 7/147 was, before the alleged allocation to the petitioner, developed with a permanent Government House No T/HG/6. They assert that all the land parcels in question were set aside and developed for a public utility purpose and as such, in view of section 3 of the Government Lands Act Cap.300, were not capable of alienation. They contend that the alleged allocations to the petitioners were therefore irregular and unlawful.
26. The respondents submit further that the averment by the petitioners that the land parcels that they were allocated were ‘uncommitted’ plots was untrue and consequently, the alleged allocation to the petitioners was therefore based on misrepresentation, was fraudulent, and the petitioners were parties to the fraud as they applied for the property allocation knowing that the land was developed with permanent government houses.
27. It is the respondents’ case therefore that the properties the subject of the petitions before me, having been developed with government houses or hived off from parcels with government houses, were subject to the Exchequer and Audit Act Cap 412, and the Government Financial Regulations and Procedures.

28. They contend that section 4(1) of the Exchequer and Audit Act required all persons concerned in the collection, receipt, custody and payment or issue of public moneys, stores, stamps, securities or other Government property to obey all such instructions as they may from time to time receive from the Treasury; that the Government Financial Regulations and Procedures existing at the time of the alleged allocation to the petitioners required that whenever it was the intention of the government to dispose of government property or assets by way of gift, transfer or sale as the result of the transfer of duties or responsibilities of Government, the prior approval of Treasury was required if the value of the property was Kshs 200,000; that if it was more than Kshs 200,000, the prior concurrence of Treasury to sanction the transaction was required; and that the concurrence of Parliament, obtained by tabling a sessional paper by the concerned Ministry prior to the transaction taking place, was also required.
29. They respondents contend therefore that the allocation of the suit properties was not approved by Treasury nor was Parliament informed through a sessional paper; that the allocation was contrary to the Government Financial Regulations and Procedures, the Exchequer and Audit Act Cap 412 and the Government Lands Act Cap. 300, and was therefore illegal, irregular and unlawful. They therefore conclude that in view of the irregularities cited above, and bearing in mind Article 40(6) of the Constitution, the petitioners never acquired valid titles to the suit properties capable of being protected by the court.
30. While conceding that a process of validation had been embarked upon in 2007, the respondents submit that the validation was a result of the illegality, irregularity and unlawfulness in the alleged allocation of the land to the petitioners. They submit, however, that the validation process, which started in January 2007, was stopped by a notice published in the media on 2nd July 2007, and was never completed. They therefore ask that the Petitions be dismissed with costs as the alleged allocation of the suit property falls within the provisions of Article 40(6) of the Constitution.

Determination

31. I have read the respective pleadings and submissions of the parties which I have set out above in summary. I have also looked at the documents annexed to the affidavits of the parties in support of their respective cases.
32. In my view, the issue for determination in this matter is whether the District Land Registrar has any legal authority to revoke the titles issued to those of the parties in this matter who have documents of title to their properties. If no such power exists, has there been a violation of the petitioners' constitutional rights as alleged, and if so, what relief are they entitled to?

Letters of Allotment

33. Before dealing with the above issues, I believe that it is important at the outset to make a necessary distinction between the petitioners in this matter and their respective claims. This distinction is based on the fact that the right to property protected under the law and the Constitution is afforded to registered owners of land. The law applicable to this matter is section 75 of the former constitution and, pursuant to the Amended Petitions which invoked its provisions, the Constitution of Kenya 2010.
34. Section 75 of the former Constitution, which was in force at the time the alleged allocations took place, and Article 40 of the current Constitution, protect a registered owner of property from being arbitrarily deprived of his property. The properties at issue in this matter are registered under the provisions of the Registered Land Act, Section 28 of which protects the rights of the registered proprietor of the land.
35. I have set out in the table below the Petitions before me and the respective properties which they are in respect of, the alleged property owners, and the documents of title on which the alleged owners rely.

Petition No	Petitioner	Title No	Document Relied on in Support of Ownership
82 of 2010	John Mukora Wachihi	Thika Municipality /Block 7/161	Certificate of Lease whose date is unclear but Entry No. 3 indicates issue on 27 th 2002
83 of 2010	Nicholas Njau Njuguna	Thika Municipality /Block 7/147	Letter of allotment dated 25.2.1999
84 of 2010	Grace Njeri Gichuhi Ngari	Thika Municipality /Block 7/131	Letter of Allotment dated 30.9.1998 to Grace Ngari; Lease issued to Grace Ngari on 15 th August 2000 (with the names 'Njeri Gichuhi' inserted by hand; Certificate of Lease dated 15 th August 2000 issued to Budget Collection Bureau, a business name.
85 of 2010	Paul Njogu Ndungu	Thika Municipality /Block 7/167	Letter of Allotment dated 25.2. 1999
86 of 2010	Johnson Mwangi Ciugu	Thika Municipality/Block 7/162	Letter of Allotment dated 25th March 1999
87 of 2010	Samuel Gichango Njuguna	Thika Municipality /Block 7/169	Certificate of Lease dated 1 st April 2008
88 of 2010	Elijah Gathanga Ngugi	Thika Municipality /Block 7/168	Letter of Allotment dated 25.2 1999 issued to M.M. Enterprises.
89 of 2010	Jacob Kariuki	Thika Municipality /Block 7/144	Letter of Allotment dated 9th June 1999 issued to Mkaki Enterprises
90 of 2010	Joan Wambui Mwangi	Thika Municipality /Block 7/135	Certificate of Lease dated 16.4. 2002
92 of 2010	Fidelity Holdings Ltd	Thika Municipality /Block 7/152	Certificate of Lease dated 19.9. 2001

36. It is thus apparent that the petitioners in Petition Nos. 83, 85, 86, 88 and 89 of 2010 are not the registered owners of the properties that they claim to own and in respect of which they allege violation of rights. As the provisions of the Constitution and the repealed Registered Land Act illustrate, such protection is afforded only to registered owners of land. A letter of allotment is not proof of title as it is only a step in the process of allocation of land. This is the position enunciated by the Court of Appeal in the case of **Wreck Motors Enterprises –vs- The Commissioner of Lands and 3 Others Nairobi Civil Appeal No. 71 of 1997 (Unreported)**, where the Court of

Appeal stated as follows:

‘Title to landed property normally comes into existence after issuance of a letter of allotment, meeting the conditions stated in such a letter and actual issuance thereafter of a title document pursuant to provisions held.’ (Emphasis added)

37. Similarly, in **Joseph Arap Ng’ok –vs- Justice Moijo Ole Keiwua NAI Civil Application No. 60 of 1997**, the Court of Appeal observed as follows:

‘It is trite that such title to landed property can only come into existence after issuance of letter of allotment, meeting the conditions stated in such letter and actual issuance thereafter of title document pursuant to provisions in the Act under which the property is held.’

38. Consequently, as the petitioners in Petition Nos. 83, 85, 86, 88 and 89 of 2010 have no title to the respective properties they claim ownership of, they cannot allege violation of their rights under section 75 of the former constitution or Article 40 of the Constitution of Kenya 2010. Indeed, given the fact that the letters of allotment are, in some cases, issued to business names, which are not legal entities and which, as averred by the 6th respondent, have no capacity to hold property, questions do arise with regard to the propriety of the alleged allocations in the first instance. These, however, are not issues that fall for determination in this matter. Suffice to say that as they do not hold titles to the respective properties that they claim ownership of, the petitioners in Petition Nos. 83, 85, 86, 88 and 89 of 2010 cannot maintain a claim for violation of constitutional rights against the respondents.

39. However, they aver that they were allocated the respective properties set out in their petitions; that they paid certain monies as required under the letters of allotment, and further sums when the respondents started the process of validation in 2007. Clearly therefore, even though they are not the registered owners of the property, they appear to have certain interests in the properties that they claim, the extent or validity of which would need determination in an appropriate forum. Consequently, in my view, these properties cannot be taken away from them without, at the very least, affording them an opportunity to be heard. The respondents cannot purport to ‘revoke’ their titles as they have none, but they cannot take away the property or cancel the allocation without granting them a chance to be heard in accordance with the rules of natural justice now enshrined in Article 47 of the Constitution. To that extent therefore, the respondents are in violation of the rights of the petitioners in Petition Nos. 83, 85, 86, 88 and 89 of 2010

Rights of Registered Proprietors

40. With regard to the properties where the petitioners hold certificates of lease issued under the provisions of the Registered Land Act (now repealed), namely Petition Nos. 82, 84, 87, 90 and 92 of 2010, the respondent has contended that the allocation was unlawful and irregular, and they were therefore not entitled to the court’s protection as they fall under Article 40(6) of the Constitution.

41. The question whether the Registrar or indeed any of the respondents has a right to revoke the title of a registered owner of property by way of a Gazette Notice has been the subject of several decisions of this court and, in my view, is now settled in the negative. In **Kuria Greens Limited –vs- Registrar of Titles and Commissioner of Lands Nairobi HC Petition No. 107 of 2010 (Unreported)**, Musinga J held that even if land had been unlawfully acquired, the state could not revoke the registered owner’s title without following due process, and doing so was a violation of Articles 40 and 47 of the Constitution.

42. In **Sound Equipment Limited –vs- Registrar of Titles and Commissioner of Lands High Court Petition No 106 of 2010**, the Registrar had purported to revoke the petitioner’s title by way of a Gazette Notice. In granting orders in favour of the petitioners, Musinga J stated as follows;

‘However, in view of the court’s finding that the 1st respondent exceeded his power in publishing the said Gazette Notice, this court has power to declare the said notice invalid in law, null and void Though an order of certiorari as sought may not issue, I am satisfied that Gazette Notice No. 3460 dated 1st April, 2010 is of no legal validity to the extent that it purported to unlawfully revoke the petitioner’s title to the suit land and hereby make a declaration to that effect. This court is empowered by Article 23(d) of the Constitution to make a declaration of invalidity of any law that denies or violates a right or fundamental freedom in the Bill of Rights.’

43. Similarly, in **Power Technics Limited –vs- The Attorney General & Others High Court Petition No. 178 of 2011**, Majanja J, held that the respondents were in violation of the petitioners’ constitutional rights under Article 40 and 47 in purporting to revoke the petitioners’ titles by way of Gazette Notices.
44. The respondents have sought to rely on the decision of Hon. Lady Justice H. Omondi in the case of **Fahim Yasim Twaha & Another v District Land Registrar Lamu Malindi JR App. No, 17 of 2010 (Unreported)** with regard to the need to safeguard the public interest in land which has been unlawfully acquired, and contended that the orders sought in this matter should not issue as the public interest outweighs the private interest. However, it is worth noting that in that case, Omondi J observed as follows with regard to the attempt by the District Land Registrar to cancel titles by way of Gazette Notice:
- “I doubt that an illegality or what is deemed as irregular or an act of impunity can be cured by another irregular action of impunity. Just because the ex-parte applicants may have obtained the plot using improper process does not mean that the same has to be taken away from them using equally improper process.”*
45. I am in agreement with the above decisions of this court. The District Land Registrar, Thika, had no powers to revoke or cancel the title to the properties in dispute in Petition Nos. 82, 84, 87, 90 and 92 of 2010 on the basis that the properties had been unlawfully acquired. For the Registrar to purport to do so was to violate the proprietors’ rights. The right to property, as correctly argued by the petitioners, was protected under Section 75 of the former Constitution. It is also protected under Article 40 of the Constitution.
46. In addition, the proprietor is entitled to the right to be heard before action is taken to deprive him or her of property, a right that is now constitutionally underpinned by Article 47 of the Constitution. That the respondents purported to revoke the petitioners’ titles without affording them a hearing was a violation of the rules of natural justice and of their right to fair administrative action under Article 47.
47. The upshot of my findings above is that the acts of the Registrar in purporting to issue Gazette Notice No. 3449 of 1st April 2010 cancelling the titles of the petitioners in Petition Nos. 82, 84, 87, 90 and 92 of 2010 were ultra vires, null and void, and the said Gazette Notice No. 3449 of 1st April 2010 is hereby quashed in respect thereof.
48. The petitioners have sought a declaration that they are constitutionally entitled to occupy, develop and use the property in question without interference from the respondents or agents of the government. However, from the evidence before me, there are questions that need addressing with regard to the acquisition of the properties herein by the petitioners. This is apparent from the petitioners’ own averments that there was a process of validation of their acquisition that was underway in 2007, which the respondents allege was stopped.
49. The petitioners have also, in their supplementary submissions dated 30th May 2012, asked the court to grant them, in addition to the declarations sought in their petitions, monetary compensation for the violation of their rights. I am, however, unable to accede to this prayer. The

petitioners are still in possession of their respective properties, and nothing has been placed before me to establish that any damage has been suffered as a result of the purported revocation by the Registrar.

50. Further, other than making the findings set out above and issuing an order to quash the said Gazette Notice, I am not in a position to pronounce on whether the petitioners who hold titles to the properties they claim do so in accordance with the Constitution. Whether the properties were lawfully or unlawfully acquired is a matter that must be determined through a process and in a forum that allows all the parties to present their respective cases on their merits. As Majanja J observed in **Power Technics Limited –vs- The Attorney General & Others** (supra) in reliance on the decision in **Chemei Investments Limited -vs- The Attorney General & Others**, even where property is acquired unlawfully, the finding of “*unlawful acquisition*” contemplated in **Article 40(6)** must be through a legally established process. It cannot be by whim or revocation by Gazette Notice.

51. It is incumbent on the respondents, if, as they allege, their actions in issuing the Gazette Notice were motivated by the desire to protect the public interest and recover public property that was unlawfully acquired, to institute appropriate proceedings, with strict regard to due process to recover the said property.

Conclusion

52. In summary, I find and hold as follows:

- i. The petitioners in Petition Nos. 83, 85, 86, 88 and 89 of 2010, not being the registered owners of the properties that they claim but reliant on letters of allotment, cannot maintain a claim for violation of the right to property under Article 40 of the Constitution against the respondents with regard to Gazette Notice No. 3449 of 2010.
- ii. The said petitioners are however entitled to fair administrative action guaranteed under Article 47 of the constitution before any adverse action is taken against them with regard to the properties on account of which they hold letters of allotment.
- iii. The respondents violated the rights of the petitioners in Petition Nos. 82, 84, 87, 90 and 92 of 2010 guaranteed under Articles 40 and 47 of the Constitution by purporting to revoke their respective titles by way of Gazette Notice No. 3449 of 1st April 2010 and the said Gazette Notice is hereby quashed in respect thereof.
- iv. Each party shall bear its own costs of these consolidated petitions.

Dated, Delivered and Signed at Nairobi this 21st day of June 2013.

MUMBI NGUGI

JUDGE

Mr. Charles Kariuki instructed by the firm of Charles Kariuki & Co. Advocates for the Petitioners.

Ms. Janette Wandia instructed by the State Law Office for the Respondents.