



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELC. CASE NO. 414 OF 2012

PAUL ERENG..... PLAINTIFF

VERSUS

THE HON. ATTORNEY GENERAL.....1ST DEFENDANT

THE CHIEF LAND REGISTRAR.....2ND DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion application dated 6/9/12 brought under Order 51 Rule 1, 10(1) of the Civil Procedure Rules 2010, Section 44 (1) (ii), 1A, 1B, 3 and 3A of the Civil Procedure Act and all enabling provisions of the law. It seeks for the following orders:-

1. Spent.
2. That this court do make an order declaring that the purported surrender to the Government of Kenya of L.R. No. 13815 I.R. No. 52888 (hereinafter referred to as the "Suit Property") in exchange for Grant No. 53467 is **void ab initio**.
3. That this court do make an order revoking the said purported surrender of the Suit Property in exchange for Grant Number 53467.
4. That this court do make an order directing the defendants and more particularly the Chief Land Registrar to revoke, cancel and/or annul the surrender of the Suit Property and rectify the register with regard to this title accordingly.
5. That this court do order the defendants to pay the cost of this application and the entire suit to the Plaintiff/Applicant.
6. That this court do find the actions of the defendants very displeasing and award punitive damages.

The application is premised upon the grounds appearing on the face of the application together with the Supporting Affidavit of the Plaintiff sworn on 6/9/12 in which he stated that he bought the Suit Property in 1996 from one Gabriel Atambo and a transfer was duly effected in his favour. A copy of his Certificate of Title was produced. He further swore that upon transfer of the Suit Property into his name, he moved into the Suit Property and placed a Caretaker thereon. He further swore that he has been meeting all his obligations with regard to payment of rates and rent. He stated that on 3/3/12, his caretaker who resides on the Suit Property called him and informed him that some people unknown to him approached him and advised him that the Suit Property belongs to the Government of Kenya and that he should vacate the Suit Property immediately. He further stated that he immediately

got in touch with his lawyer who advised him to scan a copy of the Original Title to enable him conduct an official search at the land registry. He further stated that the result of the official search was that the Suit Property had been surrendered to the government. He further stated that he was truly shocked to see this search as he had never surrendered the Suit Property to the Government. He stated further that he still has in his custody the original title deed of the Suit Property. He swore that he does not know who could have surrendered the Suit Property to the Government and that he does not know who was issued with the new grant.

He further indicated that he wrote to the Defendants seeking an explanation as to who, when and how the Suit Property was surrendered to the Government but no explanation at all was given to him.

The application is uncontested. Despite being duly served with this application and being granted leave to file their Replying Affidavits, none of the defendants filed a response to the application. They also did not bother to attend the hearing of this application on 23/4/13 despite having been issued with a hearing notice.

A close look at the orders sought in this application reveals that the same are final in nature and do not differ from the prayers contained in the Plaint. Orders sought in this application are to declare the purported surrender *void ab initio*. This is a final order. The other order sought is to revoke the said purported surrender. That is also a final order. Further an order directing the Chief Land Registrar to revoke, cancel or annul the surrender and rectify the register also constitutes a final order. All these orders which are sought through this interlocutory application cannot be granted at this interlocutory stage of the proceedings in this suit. They can only be granted after the suit has proceeded to full trial.

For this purpose therefore, this court finds that it is not in a position to grant the orders sought. Accordingly, this application is dismissed. No order as to costs.

SIGNED AND DELIVERED AT NAIROBI

ON THE 21ST DAY OF JUNE 2013.

MARY M. GITUMBI

JUDGE