REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

(MILIMANI COMMERCIAL COURTS COMMERCIAL & TAX DIVISION)

JUDICIAL REVIEW 19 OF 2011

IN THE MATTER OF AN APPLICATION BY MAJOR GENERAL (RTD) DEDAN NJUGUNA GICHURU FOR ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF THE REGISTRATION OF TITLE ACT, CAP 281 OF THE LAWS OF KENYA

AND

IN THE MATTER OF MAJOR GENERAL (RTD) DEDAN NJUGUNA GICHURU

BETWEEN

REPUBLIC.....APPLICANT

AND

THE REGISTRAR OF

TITLES – NAIROBI REGISTRY….....1ST RESPONDENT

KENYA ANTI CORRUPTION COMMISSION .....2ND RESPONDENT

KENYA AGRICULTURAL RESEARCH INSTITUTE.3RD RESPONDENT

COMMISSION OF INQUIRY INTO ILLEGAL/

IRREGULAR ALLOCATION OF PUBLIC LAND.....4TH RESPONDENT

JUDGMENT

Through a notice in the Kenya Gazette Vol. CXII-No.124 published on 26th November, 2010 the Registrar of Titles – Nairobi Registry (the 1st Respondent) revoked the title for property L.R. No.14703 Nairobi Grant No. I.R. 74788 dated 21st October, 1997 registered in the name of Major General (Rtd) Dedan Njuguna Gichuru the Ex-parte Applicant herein. As a consequence of the 1st Respondent's action the Ex-parte Applicant moved to court on 18th March, 2011 and obtained leave to commence judicial

review proceedings.

He named Kenya Anti-Corruption Commission, Kenya Agricultural Research Institute and the Commission of Inquiry into Illegal/Irregular Allocation of Public Land (commonly known as the Ndungu Commission) as the 2nd, 3rd and 4th respondents respectively.

By way of a notice of motion dated 30th March, 2011 brought under Section 8(2) of the Law Reform Act and Order 53 Rule 3 of the Civil Procedure Rules, 2010 the Applicant seeks orders as follows:-

1. An order of *certiorari* be issued to remove into the High Court and quash the entire decision of the 1st Respondent contained at page 4349 of the Special Issue of the Kenya Gazette Vol. CXII- No. 124 published on 26th November, 2010 revoking the title for property L.R. No. 14703 Nairobi Grant No. I.R. 74788 dated 21st October, 1997 registered in the name of the Applicant.

2. An order of *certiorari* be issued to remove into the High Court and quash the entire decision of the 4th Respondent contained at Annex 25 of the Report on the Commission on Inquiry into the Illegal/Irregular Allocation of Public Land Published in June, 2004 recommending the revocation of the title for property L.R. No. 14703 Nairobi Grant No. I.R 74788 dated 21st October, 1997 registered in the name of the Applicant.

3. An order of prohibition be issued, prohibiting the 1st, 2nd, 3rd and 4th Respondents from registering against the register of property L.R. No. 14703 Nairobi Grant No. I.R 74788 dated 21st October, 1997 registered in the name of the Applicant any documents adverse to the interests of the Applicant and from further interfering with the Applicant's title and possession of the property and/or taking possession thereof from the Applicant.

4. The costs of this application be provided for.

The application is supported by grounds on its face, a statutory statement dated 17th February, 2011, a verifying affidavit sworn by the Applicant on 17th February, 2011 and annexures thereto.

The 2nd Respondent opposed the application through a replying affidavit sworn by Nzioki Wa Makau on 4th July, 2011 and the 3rd Respondent opposed the application through a replying affidavit sworn by Dr. Jackson Ntongai Kabira on 27th May, 2011.

It is important to state in brief the background of this matter. The 2nd Respondent through Nairobi H.C.C.C. No. 253 of 2007 sued the Applicant herein and Wilson Gachanja and among the orders sought was a declaration that L.R. No. 14703 registered in the Applicant's name be declared as belonging to Lands Limited a public body wholly owned by the Agricultural Development Corporation. Through Nairobi H. C. Misc. Application No. 587 of 2006 the 2nd Respondent herein had obtained conservatory orders in respect of the Applicant's parcel of land and other parcels of land not related to this application. The two suits filed by the 2nd Respondent are yet to be determined. Earlier on in 2004 the 4th Respondent had in its report concluded that the Applicant's said parcel of land was illegally or irregularly allocated to him. The 4th Respondent was a commission that had been appointed by President Mwai Kibaki to inquire into illegal/irregular allocation of public land.

For purposes of this judgement it is important to reproduce at this stage Gazette Notice No. 15584 being the challenged notice published on 26th November, 2010. It reads as follows:-

"NOTIFICATION OF REVOCATION OF LAND TITLES

WHEREAS the parcel of land whose details are described under the Schedule herein below were allocated and title issued to private developers, it has come to the notice of the Government

that the said parcels of land were reserved for public purpose under the relevant provisions of the Constitution, 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 the said titles.

SCHEDULE
Tigoni – Limuru
L.R. NO. 22008/1
L.R. NO. 22008/3
L.R. NO. 22008/5
L.R. NO. 22008/7
L.R. NO. 22008/9
L.R. NO. 22008/17
L.R. NO. 22008/22
L.R. NO. 22008/24
L.R. NO. 14703
L.R. NO. 14818
L.R. NO. 14819
L.R. NO. 15410
L.R. NO. 15410/1
L.R. NO. 22418

All the above land was reserved for Kenya Agricultural Research Institute.

G.G. GACHIHI

Registrar of Titles, Nairobi"

A careful reading of the Gazette Notice clearly shows that the 1st Respondent does not say under which law he had exercised the power to revoke the Applicant's title. The notice only shows that the land in question had been reserved for the 3rd Respondent under the Constitution, the Government Lands Act (Cap 280) and the Trust Land Act (Cap. 288).

On 3rd November, 2011 after the advocates had finished highlighting their submissions, I requested them to file more authorities and further submissions. The advocates graciously accepted my request and filed further submissions and authorities. I thank them for their co-operation. There submissions and authorities have clearly illuminated for me the path to take in this cause.

This is the first time I am dealing with the revocation of a title by the Registrar of Titles. I wanted in-depth arguments on the issue so that I could take a clear stand. I believe that every judge should have a clear stand point on every issue presented before him/her for determination. When judicial officers take clear stand points the beginning of the certainty of the law is established. It is important for parties to know when approaching a particular court that they expect a certain decision regarding particular facts. Only after individual judges become predictable will the practice of law become predictable. An advocate out there can easily advise a client on what to expect when he presents his case to the court. The fruits of certainty include increased investment in the country since investors can with certainty know their position in relation to the law. A judge should not therefore waver like a flag in the wind. He/she must be known to espouse a certain philosophy. That is what I want to do in relation to the issue of revocation of title deeds that has been placed before me for determination in this cause.

I do not mean to say judges do not err, they do. To err in good faith comes with the description of the job. When a judge makes a wrong decision, such a mistake can be corrected by a higher court on appeal. The

mistake can also be corrected when a party in a case which comes up after the mistake has been made points to the judge that the position he took in the earlier case was the wrong position.

Having gone through the papers and the advocates' arguments, I am of the view that the main issue for determination in this cause is whether the 1st Respondent acted ultra vires the laws of the land by revoking the Applicant's title. In other words, does the 1st Respondent have powers to revoke a title?

In one sentence, the Applicant's case is that the 1st Respondent has no powers to revoke his title. On the other hand the respondents say that the Applicant's title is not a valid title and the Applicant has nothing to protect by way of judicial review.

In judicial review, it is often said that a nullity is a nullity and such a nullity ought to be quashed without much ado. Counsel for the 1st and 4th respondents submitted that the Applicant was irregularly allocated the land in question and he does not have a good title which he can protect by way of judicial review. What counsel for the 1st and 4th respondents seem to be saying is that once the 1st Respondent establishes through whatever mechanisms that a certain parcel of land was unlawfully obtained then the 1st Respondent in the name of the public interest ought to cancel or revoke such a title.

When is public interest put into motion? In the case of **EAST AFRICAN CABLES LIMITED VS. THE PUBLIC PROCUREMENT COMPLAINTS, REVIEW & APPEALS BOARD AND ANOTHER [200] eKLR** the Court of Appeal indicated situations where public interest should take precedence in the following words:-

"We think that in the particular circumstances of this case, if we allowed the application the consequences of our orders would harm the greatest number of people. In this instance we would recall that advocates of *Utilitarianism*, like the famous philosopher *John Stuart Mill*, contend that in evaluating the rightness or wrongness of an action we should be primarily concerned with the consequences of our action and if we are comparing the ethical quality of two ways of acting, then we should choose the alternative which tends to produce the greatest happiness for the greatest number of people and produces the most goods. Though we are not dealing with ethical issues, this doctrine in our view is aptly applicable".

I do not hold a different view from the position taken by the Court of Appeal. The balancing of interests can only come into play where all those interests are protected by the law. In my view public interest is usually taken care of by the laws passed by Parliament. If Parliament has not found it fit to put it in the laws of the country, then however popular a certain view is, such a view cannot be elevated to the same status with the law. The courts can only ensure that public interest is taken care of by enforcing the law. This position was taken by Majanja, J in the case of **FAMY CARE LIMITED V PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD AND ANOTHER [2012] eKLR** when he stated that:-

"The petitioner has also argued that the petition before this court is brought in public interest and that being a suit brought in public interest then Article 35(1) must be read broadly as affording the petitioner the right to obtain information.

It is possible that, in fact, the petition raises matters of public interest or is brought in public interest but that alone cannot circumvent the clear limitation at Article 35(1). There is nothing in that Article that allows the limitation of citizenship to be overwritten in the public interest and I am not prepared to imply public interest where the provisions are so clear."

I agree with the opinion of Majanja, J because I do not believe that public interest can be addressed outside the provisions of the law. When counsel for the 1st and 4th respondents asks the court to elevate public interest above the law, he is inviting this court to take this country into the abyss of lawlessness. This court will not accept such an invitation.

Should this court therefore protect illegally acquired land? The answer is in the negative. As Majanja, J observed in **CHEMEY INVESTMENTS LIMITED VS. THE ATTORNEY GENERAL AND OTHERS Nairobi Milimani Law Courts, Constitutional Petition No. 94 of 2005 (unreported):-**

"The Constitution protects a higher value, that of integrity and rule of law. These values cannot be side stepped by imposing legal blinders based on indefeasibility. I therefore adopt the sentiments of the court in the case of Milan Kumarn Shah & 2 Others v City Council of Nairobi & Another (supra) where the Court stated as follows, "We hold that the registration of title to land is absolute and indefeasible to the extent, firstly, that the creation of such title is in accordance with the applicable law and secondly, where it is demonstrated to a degree higher than the balance of probability that such registration was procured through persons or body which claims and relies on that principle has not himself or itself been part of a cartel which schemed to disregard the applicable law and the public interest".

I wish to add that the court should not allow itself to be used as a cleansing mechanism by those who unlawfully or irregularly acquire public land. All efforts carried out to recover public land if done within the confines of the law should be supported by the courts.

The question would then be whether the revocation of the Applicant's title by the 1st Respondent was done within the confines of the law. I have been invited by the respondents to find that the Applicant's title is not protected by **Article 40 of the Constitution. Article 40** protects the right to property but Sub-Article 6 of the same Article states that:-

"The rights under this Article do not extend to any property that has been found to have been unlawfully acquired."

My understanding of **Sub-Article 6** is that a property can only fall outside the protection of **Article 40** if there is a finding that the same was unlawfully acquired. The question is: who makes the finding under **Sub-Article 6? Article 40** does not name the body which is supposed to make a finding as to whether a property was unlawfully acquired. It is therefore necessary to read the other articles of the Constitution in order to understand who should make a finding on the status of a property.

Chapter 5 of the Constitution deals with land and environment. Under **Article 67(1)** a National Land Commission is established. One of its functions is found in **Article 67(2) (e)** in the following words:-

"to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;"

It can therefore be argued that one can approach the National Land Commission and lodge a complaint that the allocation of public land to a particular person resulted in historical injustice.

A clear provision on how illegally acquired land will be dealt with in the new dispensation is found in **Article 68** which provides that Parliament shall enact legislation on land. Under **Article 68 (c) (v)** one of the legislations to be enacted will **"enable the review of all grants or dispositions of public land to establish their propriety or legality."**

It is clear that none of the above cited provisions of the Constitution clearly provides who should make a finding as to whether a given parcel of land was unlawfully acquired. The Constitution has however established one arbiter of disputes in this country. In **Article 159(1) of the Constitution** it is provided that:-

"Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution."

Under **Article 159** the people of Kenya have therefore placed the making of any finding in justiciable matters on courts and tribunals. Whether public land was irregularly acquired by an individual is a

justiciable matter and the only institutions that can determine if indeed it was unlawfully acquired is the courts and tribunals. At the moment therefore, for a property to fall outside the protection of **Article 40 of the Constitution** a court or tribunal must have made a finding that the property was illegally or improperly acquired. The respondents' contention that the Applicant's parcel of land does not fall under the protection of **Article 40 of the Constitution** therefore fails.

As has been demonstrated, the Registrar of Titles does not have any power under the Constitution to make a declaration that a particular parcel of land was irregularly or unlawfully acquired. The question that follows is whether the 1st Respondent has powers under the current land laws to revoke a title for whatever reason. The 1st Respondent herein is a creature of the Registration of Titles Act, Cap 281. Part XIII of the Act provides for rectification of titles: cancellation of entries and correction of instruments. **Section 60** gives power to the Registrar as follows:-

"60(1) Where it appears to the satisfaction of the registrar that a grant, certificate of title or other instrument has been issued in error, or contains any misdescription of land or of boundaries, or that an entry or endorsement has been made in error on any grant, certificate of title or other instrument, or that a grant, certificate, instrument, entry or endorsement has been fraudulently or wrongfully obtained, or that a grant, certificate or instrument is fraudulently or wrongfully retained, he may summon the person to whom the grant, certificate or instrument has been so issued, or by whom it has been obtained or is retained, to deliver it up for the purpose of being corrected.

(2) If that person refuses or neglects to comply with the summons, or cannot be found, the registrar may apply to the court to issue a summons for that person to appear before the court and show cause why the grant, certificate, or other instrument should not be delivered up to be corrected, and, if the person when served with the summons neglects or refuses to attend before the court at the time therein appointed, the court may issue a warrant authorizing and directing the person so summoned to be apprehended and brought before the court for examination."

The said section only allows the Registrar to cancel a title with the cooperation of the person in whose name the title is registered. Where the person refuses to cooperate the Registrar has no option but to involve the court. There is no evidence that the Applicant herein was involved in the process that led to the revocation of his title. There is also no evidence that the court was involved in the cancellation of the Applicant's title.

In the case of **KURIA GREENS LIMITED v REGISTRAR OF TITLES & ANOTHER (2011) eKLR** the Applicant's title had been revoked through the same Gazette Notice which revoked the title of the Applicant before me. Musinga, J quashed the Gazette Notice in so far as it related to the revocation of the title of Kuria Greens Limited and in doing so he had this to say on the powers of the Registrar of Titles:-

"In Gazette Notice No. 15584 vide which the 1st respondent purported to revoke the petitioner's title to the suit land he did not indicate the provisions of law that he invoked as the basis for his decision. Was that an omission? I do not think so. This is simply because there is no provision under the Registration of Titles Act or any other Act that bestows on the 1st respondent or the Commissioner of Lands or the Government power to revoke a registered title in the absence of a court order to that effect. I have carefully searched the Land Titles Act, the Registration of Titles Act, the Indian Transfer of Property Act, the Government Lands Act, the Registered Land Act and the Land Control Act and I did not come across any provision that grants power to a Registrar of Titles or Commissioner of Lands to arbitrarily revoke a valid land title."

Musinga, J went ahead to show the Government the legal path that it can take to get its hands on private property in the following words:-

"Whereas unlawful acquisition of public property by citizens must be lawfully resisted, the court will be failing in its constitutional duties if it failed to protect citizens from unlawful acquisition of

their property by the state through unlawful decisions taken by public officers. If the respondents were satisfied that the suit land had been unlawfully alienated and that it was in the interest of the public that the land reverts to the state or to the Kenya Agricultural Research Institute, appropriate notice ought to have been given to the petitioner and thereafter the respondents ought to have exercised any of the following options:

(a) Initiate the process of compulsory acquisition of the suit land and thus pay full and prompt compensation to the petitioner or

(b) File a suit in the High Court challenging the petitioner's title and await its determination, one way or the other.

Short of that, the respondents' purported action of revoking the petitioner's title is an affront to private proprietary rights which are guaranteed by our Constitution and such an action must be frowned upon by the law."

I agree with Musinga, J on his exposition of the law. The respondents have however urged me to distinguish the decision in the **Kuria Greens Limited** case since the petitioner in that case was not the original registered proprietor like the Applicant before me. The petitioner in the **Kuria Greens Limited** case could therefore have been considered as an innocent purchaser without notice. It is not disputed that the Applicant before me was the original registered proprietor of the parcel of land in question. I have however demonstrated that even where there is clear evidence of fraud and the registered proprietor does not voluntarily surrender the title, the only avenue open to the 1st Respondent is to go to court. In fact the 2nd Respondent did the right thing by filing High Court Misc. Application No. 587 of 2006 and High Court Civil Suit No. 253 of 2007. At the moment the Kenyan laws allows only a court of law to determine the legality of the title of a parcel of land. Even a thief who has been found in act of stealing is still entitled to the due process of the law. The police cannot send such a thief straight to jail. The validity of a title document can only be pronounced by the court. I therefore find that the 1st Respondent acted in excess of his powers by purporting to revoke the Applicant's title through Gazette Notice No.15584. His decision ought to be quashed.

Let me for a moment imagine that the 1st Respondent indeed had the power to revoke a title to land without involving the courts. Would his action be valid in the circumstances of this case? I hold his action would still be invalidated for the simple reason that he never complied with the natural justice doctrine of *audi alteram partem* (no man shall be condemned unheard). The Applicant was never given an opportunity to explain how he acquired the title. I would therefore still have quashed the 1st Respondent's decision even if he had power to revoke the Applicant's title without resorting to the courts.

I will give the 1st Respondent the benefit of doubt and assume that he was not aware of the cases which the 2nd Respondent had filed in the High Court against the Applicant herein. If it was proved that the 1st Respondent had knowledge of the cases and had gone ahead to revoke the title, then this court could have easily attributed bad faith to the action of the 1st Respondent.

What then remains to be decided is whether the Applicant is entitled to the reliefs sought. For the reasons already stated, I grant the Applicant the 1st prayer in his notice of motion and remove to this court for purposes of quashing the decision of the 1st Respondent contained in Kenya Gazette Vol. CXII-No.124 published on 26th November, 2010 in so far as the said notice relate to the revocation of the Applicant's title to property L.R.No.14703.

As for prayer number 2 the Applicant seeks an order of certiorari quashing the decision of the 4th Respondent as contained in its report published in June, 2004. The respondents have opposed the grant of this prayer on the ground that the same contravenes the 6 months rule found in Section 9(3) of the Law Reform Act and Order 53 Rule 2 of the Civil Procedure Rules. The Applicant says the six months rule is only applicable to court proceedings and the Ndungu Commission Report cannot be called court

proceedings. The decision of J.G. Nyamu, J (as he then was), R.Wendoh, j and Anyara Emukule, J in the case of **REPUBLIC V THE JUDICIAL COMMISSION OF INQUIRY INTO THE GOLDENBERG AFFAIR & TWO OTHERS EXPARTE HON. PROFESSOR GEORGE SAITOTI (2006) eKLR** was cited by the Applicant to support his position.

I do not find it necessary to comment on the decision of this court in the **Ex-parte Hon. Professor George Saitoti** case to the effect that the six months rule is not applicable to all certiorari applications. I will come back to this argument after considering the respondents' alternative submission on this issue.

In the alternative the respondents argued that the Applicant should not be granted the order of certiorari asked for in the 2nd prayer because of inordinate delay. It is on record that the Applicant came to court in March, 2011. The Ndungu Commission Report was published in June, 2004. The Applicant is therefore seeking an order of certiorari over six years after the report was published.

The question would then be should the courts leave its doors forever open to those who seek to have decisions by public authorities declared void? By the nature of the orders sought in judicial review proceedings, such proceedings, should be commenced immediately the decision being challenged is made by a public body. It is important that public bodies and interested parties should know as soon as possible whether the decisions which they have made and which have been challenged can be relied upon. Whoever wants to challenge the action of a public body is therefore expected to move the court promptly once the decision is made. Judicial review remedies are discretionary in nature and one of the grounds which courts use to deny applicants judicial review remedies is where an applicant has delayed in filing the cause and has failed to offer a reasonable explanation for the delay. The need to commence judicial review proceedings promptly was clearly brought out in the cause of **REGINA VS LONDON BOROUGH OF HAMMERSMITH AND FULHAM (RESPONDENTS) AND OTHERS EX-PARTE BURKETT AND ANOTHER (FC (APPELLANTS) (2002) UKHL 23** by Lord Hope of Craighead in the following words:-

"On the other hand it has repeatedly been acknowledged that applications in such cases should be brought speedily as possible. Ample support for this approach is to be found in the well-known observations of Lord Diplock in *O'Reilly v Mackman* 2AC 237, 280-281 to the effect that the public interest in good administration requires that public authorities and third parties should not be kept in suspense for any longer period than is absolutely necessary in fairness to the person affected by the decision; see also *R v Dairy Produce Quota Tribunal for England and Wales, Ex p Caswell [1990]* 2AC 738. But decisions as to whether a petition should be dismissed on the ground of delay are made in the light of the circumstances in which time was allowed to pass. As Lord President Rodger put it in *Swan v Secretary of State for Scotland 1998* SC 479,487:

"It is, of course, the case that judicial review proceedings ought normally to be raised promptly and it is also undeniable that the petitioners let some months pass without starting these proceedings. None the less, in considering whether the delay was such that the petitioners should not be allowed to proceed, we take into account the situation in which time was allowed to pass."

In Ex p Caswell [1990] 2AC 738,749-750 Lord Goff of Chieveley said that he did not think that it would be wise to attempt to formulate any premise definition or description of what constitutes detriment to good administration. As he pointed out, interest in good administration lies essentially in a regular flow of consistent decisions and in citizens knowing where they stand and how they can order their affairs. Matters of particular importance, apart from the length of time itself, would be the extent of the effect of the relevant decision and the impact which would be felt if it were to be reopened."

I am persuaded by the opinion of Lord Hope of Craighead and I am of the view that where an applicant comes to court too late in the day the court should not exercise its discretion in favour of such an applicant. It is imperative for any applicant to know the decision being challenged does not only affect the applicant but other parties too and those other parties may have acted on the decision.

Let me now go back to the six months rule in respect to filing applications for orders of certiorari. I think the Court of Appeal has now put to rest the proposition in the **Ex-parte Hon. Professor George Saitoti** case (supra)to the effect that the six months rule is applicable to court proceedings only. In the case of **NAKUMATT HOLDINGS LIMITED V COMMISSIONER OF VALUE ADDED TAX [2011] eKLR** the Court of Appeal (Bosire, Githinji & Visram JJA) stated that:-

"An application for an order of judicial review is intended to be a quick and inexpensive procedure to aid a party who, in a way, is in distress. That is why, for instance, in the case of *certiorari*, there is a time limit within which such an application has to be made. The proceedings for an order of judicial review are commenced by a chamber summons for leave to bring, such an application, which is normally made *ex parte.* That is the procedure the appellant adopted, and because its intended application for which leave was sought, was for an order of *certiorari*, time was of essence. An application for an order of *certiorari* has, by dint of the provisions of section 9 (3) of the Law Reform Act as also order 53 rule 2 of the Civil Procedure Rules, to be brought within six months of the decision sought to be quashed."

It is imperative to note that the appellant in the above quoted case was seeking leave to apply for an order of *certiorari* to quash the decision of the Commissioner of Value Added Tax. Such a decision cannot be called a decision arising out of court proceedings.

I therefore agree with the respondents that the application for an order of *certiorari* to quash the Ndungu Commission Report is statutory barred and even if the same was not statutory barred then the act of bringing the application over six years after the report was published points to an indolent applicant and the court does not come to the aid of such a party. The 2nd prayer in the application is therefore denied.

In the 3rd prayer the Applicant seeks an order to prohibit the respondents from registering any interests adverse to his interests and from further interfering with the Applicant's title and possession of the property in question. This prayer is couched in such a way that if it is issued it may mean that this court has established that the Applicant legally acquired the title to the parcel of land in question. This court has not enquired into how the Applicant acquired the parcel of land in question. That issue will be dealt with by the court(s) hearing H.C. Misc. Application No. 587 of 2006 and H.C.C.C. No. 253 of 2007. I therefore do not find it appropriate to grant the 3rd prayer in the notice of motion.

At the end of the day the Applicant's application partly succeeds in terms of prayer 1 alone. The 2nd and 3rd prayers are not granted. The Applicant will get costs from the 1st Respondent.

Dated and signed at Nairobi this 24th day of April, 2012

W.K. KORIR
JUDGE