



IN THE MATTER OF ARTICLE 22 AND 23 OF THE CONSTITUTION OF KENYA
AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER ARTICLES 21,40,47 AND 60 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION
AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL)
HIGH COURT PRACTICE AND PROCEDURE RULES, 2006

BETWEEN

MOHAMED BALALA

MICHAEL SANGORO

JANET N. KATISYA

MERCY NGUGI

ABED O. ABED

GEORGE ODULL

AZMINA H. AMARSHI

KARIM A. CHAKERA

JAYANT SHAH

PAUL WAMUTI NDEGWA

PRISCAH OBURA

CHARLES OPULLU

As officials of the MOMBASA LAW SOCIETY.....PETITIONERS

AND

THE HON. ATTORNEY GENERAL.....	1 ST RESPONDENT
THE COMMISSIONER OF LANDS.....	2 ND RESPONDENT
THE CHIEF LANDS REGISTRAR.....	3 RD RESPONDENT
THE REGISTRAR OF LANDS-MSA.....	4 TH RESPONDENT
THE REGISTRAR OF LANDS-KILIFI.....	5 TH RESPONDENT
THE REGISTRAR OF LANDS – LAMU.....	6 TH RESPONDENT
THE REGISTRAR OF LANDS – KWALE.....	7 TH RESPONDENT
REGISTRAR OF TITLES-COAST REGISTRY.....	8 TH RESPONDENT

JUDGMENT

The petition herein was filed by the officials of the Mombasa Law Society. It seeks the following prayers:

- 1. An order prohibiting the 2nd, 3rd, 4th, 5th, 6th, 7th and 8th respondents and its officers appointed under the Registration of Titles Act (Cap 281) and Registered Land Act (Cap 300) from requiring Presidential consent as a Pre-condition before transferring property that is situated on the 1st and 2nd row Beach Plots.***
- 2. A declaration that Presidential consent is an illegal and discriminative practice against owners of 1st and 2nd row beach plots.***
- 3. That this Honourable Court do grant any other appropriate relief and do make such further or other orders and to give such further or other directions as this Honourable Court may consider appropriate for the purpose of enforcing or securing the enforcement of the provisions of Articles 19,20,21,22,23,27 and 40 of the Constitution and any other Articles of the Constitution in relation to the Petitioner in this petition.***

The affidavit in support of the petition was sworn by the then chairman of the Mombasa Law Society. He deponed that the 2nd to the 8th respondents require a transferor of land situated at the Coast Province along the beach on the 1st and 2nd row commonly known as beach plot to obtain presidential consent as a pre-condition to register transactions on such plot. The deponent stated that the requirement for such consent is discriminatory because there is no such similar requirement for the rest of the country. That there is no such requirement for the rest of the country even where the transactions involve land in security sensitive areas. That there is no statute which provides for such consent to be obtained. The deponent further stated as follows:

“that as there is no statute to back the requirement of a presidential consent; the procedure currently being adopted to obtain such consents is shrouded with bribery and corruption and takes a long time inflating the costs incurred in registration of transfers. ...that the entire procedure of obtaining presidential consent has been unlawful and is tainted in illegality, corruption and abuse of office by 2nd, 3rd, 4th, 5th, 6th, 7th and 8th respondents.”

The deponent stated that the requirement was discriminatory to those carrying out transactions to beach plots.

The petitioners filed their written submissions in support of the petition. The respondents did not file any submissions and the learned state counsel confirmed that the respondents were making no submissions in opposition to the petition. The petitioner's written submissions were in the same vein as the affidavit in support of the petition. It was not controverted by the respondents. It therefore follows that there is no legal basis for requiring a consent to be produced when registration of transaction over beach plots is carried out. There is no doubt that such discrimination is in contravention to the national values set out in the constitution which values are required of the state officers and public officers who are the respondents in this action. Article 10 of the constitution provides some of the National values of this country as:

- The rule of law
- Equity
- Non-discrimination
- Transparency

For the respondent to require the petitioners amongst others to provide presidential consent for such transactions, contravenes all the above national values. That requirement also contravenes Article 27(1) (4) of the constitution. Those Article are as follows:

“(1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

(4) The state shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.”

The fact that the respondents failed to respond to this petition is seen as a concession on their part that the requirement of presidential consent does not enjoy the backing of any law. It is in my view an appendage of yesteryears when presidential decrees were equated to the law. It has no place in the Kenyan society of today since it is discriminative in nature.

I grant the following orders:

- 1. An order is hereby issued prohibiting the 2nd, 3rd, 4th, 5th, 6th, 7th and 8th respondents and its officers appointed under the Registration of Titles Act (Cap 281) and Registered Land Act (Cap 300) from requiring Presidential consent as a Pre-condition before transferring property that is situated on the 1st and 2nd row Beach Plots.***
- 2. A declaration is hereby made that Presidential consent is an illegal and discriminative practice against owners of 1st and 2nd row beach plots and is therefore null and void.***
- 3. The petitioners are awarded costs.***

JUDGMENT BY:

MARY KASANGO

JUDGE

DATED and DELIVERED at MOMBASA this 17th day of May, 2012.

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JUDGE