



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Judicial Review 169 of 2010

**IN THE MATTER OF: AN APPLICATION FOR ORDERS OF CERTIORARI, PROHIBITION
AND MANDAMUS**

AND

IN THE MATTER OF: THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: THE REGISTERED LANDS ACT

AND

IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN

LIVINGSTONE KUNINI NTUTU.....APPLICANT

VERSUS

THE MINISTER FOR LANDS1ST RESPONDENT

THE DISTRICT LAND REGISTRAR – NAROK.....2ND RESPONDENT

THE HON. ATTORNEY GENERAL.....3RD RESPONDENT

COUNTY COUNCIL OF NAROK.....1ST INTERESTED PARTY

OL KIOMBO LIMITED.....2ND INTERESTED PARTY

RULING

This is a Ruling on an application made by Mr. Omogeni, learned Counsel for the Interested Party and Mr. Kakoi for the Hon. Attorney General for the Respondents seeking that this court refers this case under Article 165(4) of the Constitution of Kenya to the Hon. Chief justice to empanel a three judge bench to hear and determine the matter.

The context within which the application is made is that the Exparte Applicant herein Livingstone Kunini Ntutu with leave of the court commenced judicial review proceedings challenging the decision of the Respondents to revoke his title to land LR.No.CIS Mara/Talek/155. The Exparte Applicant is the registered proprietor of all that piece of land known as LR.No.CIS Mara/Talek/155. He alleges that the purported cancellation or revocation of title to the said land contravened the provisions of the Registered Land Act and infringed on his constitutional rights to acquire and own private property guaranteed under Article 40 of the Constitution of Kenya. He asserts that the decision of the Respondents was illegal as it was in blatant violation of the law and the constitution and should be quashed by the court using the remedy of Certiorari.

In the instant application, learned counsel for the Interested Party and the Respondents have argued that this matter raises important and weighty constitutional issues as the subject property was alienated from the famous Masai Mara Game Reserve part of Kenya's National Heritage without following the legal process prescribed under the relevant laws. It is alleged that the land in question includes a river/rivers.

The applicants argue that the entire area covering the Masai Mara Game Reserve was set aside by His Excellency the former President Daniel Toroitich Arap Moi through a Grant issued to the Narok County Council (1st Interested Party) under the Registration of Titles Act requiring that the land be used solely as a National Reserve within the meaning of the Wildlife (Conservation and Management) Act Cap.376 Laws of Kenya.

From the pleadings, it is evident that part of the land the Exparte Applicant claims ownership has been leased by Narok County Council to the 2nd Interested Party Ol Kiombo Limited. Ol Kiombo Ltd has in turn subleased the land to a company known as Talek Ltd which is running a high end tourist tented camp on the land.

It is also clear that the subject matter of the proceedings is the subject of litigation in other suits pending in the High Court being HCC.1565/2000 and Petition No.189/09.

The application is opposed by the Exparte Applicant through his Counsel Mr. Ishmael. Mr. Ishmael argued that the matter should be heard and determined by a single judge as the only issue for determination is whether the Respondents have any legal authority or jurisdiction to cancel or revoke title to private land. He expressed the view that the instant application was made with a view to delaying the hearing and final determination of the matter.

Having perused the pleadings and considered the rival submissions made by counsel on record, I have come to the conclusion that indeed this is a matter which raises important constitutional issues which are of huge public interest. I am in agreement with counsel for the Interested Party and the Respondents that it is a suitable case for hearing by a three judge bench for interpretation and determination of the various constitutional issues raised therein chief among them being the following:

- (1) What is the legal position regarding sanctity of title to land vis a vis the Respondent's alleged right to cancel/revoke title to private land in the public interest on grounds that it is suspected to have been irregularly and unlawfully acquired.
- (2) Whether Public property (National Reserve) can be alienated and proprietary rights and interests to it be vested in an individual absolutely and if so are such proprietary rights protected under the Constitution of Kenya?
- (3) What is the constitutional position regarding ownership of Natural Resources including Rivers? Are they subject to private ownership?
- (4) Whether private property rights guaranteed under the constitution (Article 40) can override public rights to the use of, enjoyment and benefit of land designated as public land.

(5) Whether the process of alienation and allocation of the suit property to the applicant was done in accordance with the law and the constitution and whether the Respondents followed the correct legal process in cancelling the title issued to the Exparte applicant.

Having addressed my mind to the issues raised, I am satisfied that this matter is fit to be referred to the Hon. Chief Justice which I hereby do for the purpose of appointing a 3 Judge Bench to hear and determine the dispute between the parties once and for all. I have also noted that there has been some delay in the hearing of this matter and the Hon. Chief Justice may in his discretion consider giving the constituted bench timelines within which to hear and determine the case.

DATED, DELIVERED and SIGNED by me this 8th day of November 2012

C.W. GITHUA

JUDGE

In the presence of:

Florence – Court Clerk

Mr. Muriithi holding brief for Mr. Ishmael for Exparte Applicant

Mr. Kakoi for 1st, 2nd & 3rd Respondents and holding brief for Mr. Omogeni for the 1st Interested Party

Mr. Onindo holding brief for Mwenesi for the 2nd Interested Party