



**Le Monde Foods Ltd v County Government of Kiambu & another (Environment & Land Case 166 of 2017) [2022] KEELC 2334 (KLR) (8 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 2334 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 166 OF 2017**

**JA MOGENI, J**

**JUNE 8, 2022**

**BETWEEN**

**LE MONDE FOODS LTD ..... PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF KIAMBU ..... 1<sup>ST</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. By an Amended Plaintiff dated 15/02/2019 the Plaintiff herein sought for Judgment against the Defendants both jointly and severally for the following orders: -
  - a) A declaration that the purported allocation of any of the Title Nos. Muguga/Gitaru/1644 to 1658 inclusive or any other Title derived from Muguga/Gitaru/1084 by the 1<sup>st</sup> Defendant to the National Government or any other authority is illegal, null and void.
  - b) A declaration that the purported cancellation of Title Nos. Muguga/Gitaru/1644 to 1658 by the 2<sup>nd</sup> Defendant is null and void.
  - c) An order to invalidate and cancel the Gazette Notice No. 6862 dated 17<sup>th</sup> July, 2017 issued by the 2<sup>nd</sup> Defendant in so far as it purports to nullify Title Nos. Muguga/Gitaru/1644 to 1659 inclusive.
  - d) A permanent injunction to restrain the Defendants their agents /servants or any person(s) claiming through them from constructing, trespassing or any other way howsoever interfering with the Plaintiffs use of Land known as Muguga/Gitaru/1644,1645, 1646, 1647, 1648, 1652, 1653, and 1658.



- e) General Damages.
  - f) Costs of this suit and interest thereof.
2. The suit is opposed. The 1<sup>st</sup> Defendant entered appearance on 7/03/2019 and filed a Defence dated 17/04/2019. The 2<sup>nd</sup> Defendant did not enter appearance or file a Defence. The suit proceeded by way of viva voce evidence and the plaintiff called one witness. PW1 testified on 3/03/2022. The Defendants did not call any witnesses.

### **Plaintiffs' Case**

3. It was the Plaintiff's claim that the Plaintiff Company is and was at all material times the registered proprietor of Land Parcel No. Muguga/Gitaru/1084 which was later sub-divided into Land Parcel No. Muguga/Gitaru/1644, 1645, 1646, 1647, 1648, 1649, 1650, 1651, 1652, 1653, 1654, 1655, 1656, 1657, 1658 and 1659.
4. The Plaintiff avers that they subsequently transferred land Parcel No. 1649 and 1650 to one Leah Wangui Githu and Land Parcel No. 1651 to one William Kaniaru Gicharu and retained the rest of the sub-divisions in its name.
5. The Plaintiff avers that the 2<sup>nd</sup> Defendant subsequently compulsorily acquired land Parcel Nos: Muguga/Gitaru/1649, 1650, 1651 and 1659 for the construction of the Southern Bypass and the owners of the said Parcels including the Plaintiff were paid compensation in full.
6. The Plaintiff contends that by a letter dated 18/08/2010 and without any lawful justification, right or notice to the Plaintiff, the Town Council of Kikuyu the legal predecessor of the 1<sup>st</sup> Defendant purported to allocate the Plaintiff's Land Parcels Nos. Muguga/Gitaru/1654, 1655, 1656 and 1657 to the National Government for the Construction of District Headquarters.
7. That on diverse dates, the 1<sup>st</sup> Defendant has interfered with the Plaintiff's quiet possession, user and occupation of the land parcels aforesaid.
8. They aver that the 2<sup>nd</sup> Defendant also contracted a contractor to construct a permanent structure on the said Parcel of Land and the construction commenced but was later abandoned after this suit was filed.
9. By a Gazette Notice No. 6862 dated 17/07/2017 the 2<sup>nd</sup> Defendant purported to cancel the Plaintiff's Titles Nos. 1084 to 1659 inclusive without notice or due process.
10. The Plaintiff avers that the acts of the Defendants are unlawful, illegal, null and void and in flagrant disregard of the sanctity of private property and the Plaintiff claims damages.

### **Evidence By The Plaintiff**

11. PW1 – Ngige Mondo testified that he is the Managing Director of the Plaintiff Company. He adopted his two witness statements dated 7/02/2012 and 27/08/2020 respectively and relied on his two list and bundle of documents dated 7/02/2012 (exhibit 1-12) and 27/08/2020 (exhibit 13-23) as his evidence.
12. It was his evidence that he was informed that Muguga/Gitau/487 would be available for allocation. He testified that there is a mutation form prepared by Kiambu County Council subdividing the suit property into seven (7) plots. He was allocated plot F which upon registration became Muguga/Gitaru 1084. The proprietor was Kiambu County Council. He signed it. PW1 was an applicant.



13. He avers that he later subdivided his land so that he could undertake his projects in a more dynamic way. He adduced evidence of the approval for subdivision (at page 44 of the trial bundle) addressed to the plaintiff company allowing it to divide into 16 pieces, No. 1644 to 1659 inclusive. The plot was in the plaintiff's name. The title number 11084 was in the Plaintiff's name including all the 16 titles.
14. He contended that Kikuyu town council contracted an engineer to erect a market on his parcel of land. That they even destroyed the board as seen on the photographs of the site adduced (page 36 – 37). They stopped construction when PW1 sued them. He later got the titles in 2001 of the pieces 1644 to 1659. He disposed of 1649, 1650 and 1651. He sold to Leah Wangui and William Kaniaro respectively. Before they could start developing, there was a notice that some pieces would fall under Southern Bypass and as such they would be compulsorily acquired.
15. NLC called all stakeholders who owned land to a meeting. There was a Kenya Gazette Notice (at page 60) dated 25/05/2006. The property gazette for acquisition was Maguga/Gitaru 487 but stated that land belonged to County Council of Kiambu. This was in 2006. This, irrespective of the fact that mutation form dated 28/05/2002, the land had already been subdivided. He communicated the anomaly and on 23/08/2013 another gazette notice was communicated, and they corrected the same (page 66). It listed 1649, 1650, 1651 and 1659. There were roads bordering the same then. The property was valued and there was no opposition about his plots. Kikuyu town council never appeared to oppose the land ownership. It was advertised. The process birthed the valuation (on page 68 to 70). At page 69, there are 1659 valued at Kshs. 6.3 million, 1651 valued at Kshs. 6.4 million, 1650 valued at Kshs. 4.8 million and 1649 at Kshs. 2.3 million.
16. He averred that as per the evidence adduced on page 71, payment vouchers were prepared by KeNHA, and the amounts were summarized. The payment was made, and no one complained.
17. There were 12 plots that remained and that is the time the deputy county commissioner fenced part of the land and they told the plaintiff to go to court. This is because in 2006, the plaintiff had gone to court under Maguga/Gitaru 1084 against the contractor.
18. His lawyer showed him a letter that purported that 1644 – 1659 were part of Maguga/Gitaru/1015. They called them for a meeting sometime in 2017. PW1 never received a notice. The citation is wrong because their plots never originated from Maguga/Gitaru 1015. NLC put up the notice. At the meeting with NLC earlier, they agreed that road construction would go on as they awaited payment and the payment was done as earlier stated.
19. On page 75, the plaintiff adduced a letter referring to the same parcel of land Muguga/Gitaru/1015 dated 9/11/2016 from the deputy county commissioner. There is also another letter dated 18/08/2010 allocating Muguga/Gitaru/1015 to district commissioner Kikuyu written by town council of Kikuyu. PW1 avers that he was not made aware of the said allocation.
20. At page 79 – 81, he contends that there is an issuance of the final gazette notice dated 28/07/2017 whereby NLC gazette review of grants for disposal of public land. In relation to Muguga/Gitaru 1084, they said that they were cancelling the titles. The reasons for cancellation were provided under column 3,4 and 5. It is his contention that according to NLC, his parcel of land was public. He prays that the court nullifies the said gazette notice as it was reserved by Kiambu county commissioner for industry and was allocated for that strength.
21. He added that if there was any other overriding interest for the county, the Government of Kenya should have bought from the owners. He avers that he was not included in the process of revocation and was also not notified. He asked the Court to grant him prayers as per his amended plaint. He added that he has asked for general damages as he has not been able to access the plot.



22. During Cross Examination, he testified that he had approached the Kiambu County Council as seen on page 16. He received an allotment letter, but he has not filed the same in court. He averred that he signed the acceptance, but it is not in court either. At page 24, there is no mention of the plaintiff or any other allottee. The allotment letter is not in Court. At page 76, it is his evidence that the allotment letter bares his plots 1655, 1656 and 1657. In the amended plaint, paragraph 7, parcel no. 1654 is included yet the letter of page 76 does not mention 1654. He avers that the letter at page 74 was never sent to him, so he never attended. He added that he was not aware that he has wrongly sued the county government of Kiambu. He agrees that there is no demand letter to County Government of Kiambu.
23. It is his evidence that the properties listed on page 2 namely 1644 to 1658 include the properties compulsorily acquired and paid for. In so far as 1649, 1650 and 1651, they are already fully paid. Further, 1649 and 1650 were transferred and the owners never asked the plaintiff to sue on their behalf. There is no title by registration Muguga/Gitaru.
24. He contended that the gazette notice at page 79 is the one in which PW1 wanted cancelled but made a mistake and suffered financial damages, but it was not quantified. On page 62, Muguga/Gitaru/487 is listed as belonging to Kiambu and that at page 65, the gazette notice nos. 3788 and 3789 of 26/05/2006 are not a rectification.
25. During re-examination, PW1 contended that the first gazette notice dated 26/05/2006 cited Muguga/Gitaru/487 as belonging to the county council of Kiambu but this was wrong. He averred that they visited NLC, and they submitted documents to show who the owner was. He added that the gazette notice on page 65 showed their names and so he has never sued NLC.
26. It is PW1's contention that if the gazette notice stands and parcel no. 1659 is nullified then the plaintiff has to pay back the monies.
27. With that evidence, the Plaintiff closed their case.

## **Defendant's Case**

### **1St Defendant**

28. The 1<sup>st</sup> Defendant entered appearance on 7/03/2019 and filed a Defence 17/04/2019. They deny each and every allegation made in the Plaint, and they further aver that the plaintiff is not entitled to the prayers prayed against the 1<sup>st</sup> Defendant.
29. The 1<sup>st</sup> Defendant avers that the said sub-division of land parcel No. Muguga/ Gitaru/1084 was never done.
30. In response to paragraph 7 and without prejudice to the foregoing, the 1<sup>st</sup> Defendant avers that no such letter was written on 18/08/2010 purporting to allocate the plaintiffs land parcel No. Muguga/Gitaru/1654,1655, 1656 and 1657 to the National Government for the construction of District Headquarters.
31. The 1<sup>st</sup> defendant avers that under the [Land Act](#) the procedure for compulsory acquiring land is clearly outlined.
32. They contend that without prejudice to the foregoing that if at all a gazette Notice No. 6862 dated 17/07/2017 was issued cancelling the plaintiff's title Nos. 1084 to 1659 inclusive then due process of the law must have been followed.



33. The 1<sup>st</sup> defendant further avers that the suit herein raises no reasonable cause of action against the 1<sup>st</sup> Defendant and is an abuse of court process.
34. They pray that the Plaintiff's suit be dismissed with costs.

## **2nd Defendant**

35. The 2<sup>nd</sup> Defendant did not enter appearance or file a Defence.

## **Evidence By The Defendants**

36. The Defendants did not call any witnesses. They closed their case.

## **The Plaintiff's Submissions**

37. The Plaintiff's submissions are dated 22/04/2022. Their claim is against the Defendants as outlined in the Amended Plaint dated 15/02/2019 and sought the orders stated therein.
38. Aside from the summary of the Plaintiffs' case on record, the plaintiff submitted that the purported revocation of their titles vide the impugned gazette notice is null and void. They submit that the mandate of the 2<sup>nd</sup> defendant to review and cancel titles expired on 19/05/2017 and it was not extended (Section 14 of the *NLC Act*). It is their case that gazette notice issued on 17/07/2017 and captioned No. 6862 was invalid as the Defendant's mandate to review the allocation of the subject titles or recommend any action thereon had lapsed at the least 2 months prior. They aver that the purported revocation of the titles is ultra vires to the powers of the NLC as provided under Article 67 (2) of *the Constitution* and section 15 of the *NLC Act*. That the NLC cannot revoke a title as the power to revoke is only vested in the Land Registrar. They submit that they were also denied the right to a fair hearing as per the provisions of section 14 of the *NLC Act*. that they were not served with a complaint or a notice of hearing by the 2<sup>nd</sup> Defendant. They submit that the 2<sup>nd</sup> Defendant did not come to court to explain what transpire and therefore the Plaintiff's testimony is uncontroverted. They submit that the Plaintiff is entitled to orders in terms of prayers (a), (b), (c) and (d) in the Plaint. On general damages, it was their submission that the 1<sup>st</sup> defendant has deprived them of their property since they started interfering with the Plaintiff's quiet use and possession of thereof in 2006 when the suit was first filed. That the interference has now become an eviction from the property. Again, they submit that the 1<sup>st</sup> defendant never tendered any evidence in court. That they just filed a simple denial. They asked the court to award damages as per Article 23 (3) (e) in the amount Kshs. 25,000,000.00. They relied on the following authorities *Stephen Mwangi Mureithi v National Land Commission and Others* [2018] eKLR, *Robert Mutiso Lelli and Cabin Crew Ltd vs National Land Commission & 3 Other* [2017] eKLR, *Arnacher Limited v the Attorney General [2014] eKLR*, *Nakuru Industries Ltd v S.S Mehta & Sons* [2016] eKLR and *Lilavamti Ramniklal Raja & 2 Others v the Commissioner of Lands & 2 others* [2019] eKLR.
39. They prayed that honourable court to finds that they have proved their case against the defendants on a balance of probabilities and they urged that this honorable court to issue orders as prayed.

## **The Defendants' Submissions**

40. The 1<sup>st</sup> Defendant's written submissions are dated 4/05/2022. It is their submission that due process of the law was followed at the time the Gazette notices were issued. That PW1 did confirm during cross examination that indeed the letter dated 21/12/2016 was addressed to all the plot owners including the plaintiff himself who claims ownership of Muguga/Gitaru/1654, 1655, 1656 and 1657. That the purpose of the said letter was to notify the Plaintiff herein that the suit properties among others were curved out of public purpose land originally known as Muguga/Gitaru/1015.



41. It is their submission that the 2<sup>nd</sup> Defendant invoked its power under section 14 of the NLC Act to review among others the Plaintiff's titles to determine their proprietary or illegality. That the review hearing was scheduled to be held on 27/01/2017 in the 7<sup>th</sup> Floor Boardroom in ACK Garden Annex at 10am. The notice to review was also placed on Standard newspaper of 4/11/2016. That PW1 confirmed that he did not attend the hearing for the review of the titles of the properties. That, consequently, on 17/7/2017 via gazette notice No. 6862, the NLC in exercise of the powers conferred by Article 68 (c) (v) of *the Constitution* of Kenya and section 14 of the NLC Act.
42. They submitted that the chairman of the NLC informs the general public that the NLC upon receipt of complaints from the National Government, County Government and members of the public, undertook review of grants and dispositions (titles) of public land to establish their legality or otherwise. That the Chief Land Registrar was directed to revoke all titles subdivided herein (LR No. Muguga/Gitaru 1644 to 16580 and the public utility land to vest in the National and County Government for re-planning to accommodate public utilities and bona fide allottees.
43. It is their contention that LR No. Muguga/Gitaru 1655 was not listed in the Gazette Notice.
44. The further submit that during cross examination, PW1 confirmed that he does not have the letter of allocation issued to the plaintiff by the Town Council of Kikuyu. However, in his documents, PW1 produced a letter of allocation dated 18/08/2010 by the Town Council of Kikuyu to the District Commissioner, Kikuyu District informing the District Commissioner that the works town planning and markets committee meeting held on 5/11/2009 vide Min/106/Nov/2009 and adopted by the full council on 22/12/2009 adopted the approval and allocated among other Land Parcel No. Muguga/Gitaru 1655, 1656 and 1657 to the District Commissioner for purposes of construction of the District Headquarters.
45. It is their submission that NLC compulsorily acquired land parcel no. Muguga/Gitaru/1649, 1650, 1651 and 1659 for the construction of the southern bypass and the owners of the said parcels including the plaintiff were paid in full. That this position was confirmed by the Plaintiff in its pleadings. It is their contention that parties are bound by their pleadings.
46. The 1<sup>st</sup> Defendant's submits that prayer (a) cannot be granted as the plaintiff is seeking an all-inclusive declaration of null and void of any of the Title Nos. Muguga/Gitaru/1644 to 1658 inclusive of any other title derived from Muguga/Gitaru/1084 because parcel no. Muguga/Gitaru/1649 and 1650 were transferred to one Leah Wangui and Muguga/Gitaru/1651 was transferred to William Kaniaru. Also, the 1<sup>st</sup> defendant added that the plaintiff was paid in full for the parcel no. Muguga/Gitaru/1659 that was compulsorily acquired by the 2<sup>nd</sup> defendant. Under prayer (b), (c), they submit that the court cannot issue a blanket order as some of the properties are registered under individuals who are not parties to this suit. That the prayer for general damages was not quantified hence the same cannot be awarded. On costs, the 1<sup>st</sup> defendant maintains that no demand letter was served upon them as required by law and that PW1 confirmed this during cross examination and so they submit that the plaintiff is not entitled to costs of this suit and the same ought not to be awarded. They prayed that the entire suit be dismissed with costs to the 1<sup>st</sup> defendant.
47. The 2<sup>nd</sup> Defendant did not file written submissions.

### **Analysis And Determination**

48. The Court has also read and considered the pleadings by the parties, the evidence adduced and the provisions of law and renders itself as follows;



49. From the facts of the case, the Court finds and holds that the issue for determination is whether the court should grant the orders sought in the amended plaint.
50. Proof of ownership of land is found in documentary evidence which lead to the root of title. There must be shown an unbroken chain of documents showing the true owner. Once proof of ownership is tendered then the holder of the documents is entitled to the protection of the law. There is no doubt that such proof will be on a balance of probabilities, but the court must be left in no doubt that the holder of the documents proved is the one entitled to the property.
51. It is the Plaintiff's evidence that sometime in 1991, he approached the Kiambu County Council and the District Land Commissioner with a request to be allotted a piece of land for industrial and/or commercial development. That their request was approved, and they were allotted a parcel of land which was excised from Plot No. Nuguga/Gitaru/487. The Plaintiff was allotted plot F but later issued a Registration No. Muguga/Gitaru/1084.
52. He admitted that he did not provide a copy of the allotment letter in Court and agreed that the extract of the minutes from a meeting held with regard to the subdivision of Muguga/Gitaru/487 did not mention any parties that had been allotted parcels of land from the sub-division plan. However, the plaintiff has adduced receipt towards payment of annual plot rent in 1992 and standard premium for plot No. Muguga/Gitaru/1084. Additionally, the plaintiff adduced letter dated 12/7/1993 from the county clerk addressed to the permanent secretary, ministry of local government applying for grant of lease of plot No. Muguga/Gitaru/1084. In the said letter, the County Clerk confirms that the District Plots Allocation Committee had approved for allocation of said plot to plaintiff. The plaintiff also adduced a letter dated 13/09/1993 forwarding lease documents for Muguga/Gitaru/1084 to the Commissioner of Lands. Subsequently, the Plaintiff was registered as the proprietor of Muguga/Gitaru/1084 on 6/12/1993. PW1 testified that the Muguga/Gitaru/1084 was later subdivided into 16 pieces namely, No. 1644 to 1659 inclusive.
53. It was the 1<sup>st</sup> Defendant's case that the said sub-division of land parcel No. Muguga/ Gitaru/1084 was never done but he did not adduce any evidence to rebut this. It is trite law that he who alleges must prove.
54. There was evidence adduced in Court that demonstrated that the suit parcels had been allocated to the district commissioner Kikuyu vide letter dated 18/08/2010 and that the district commissioner kikuyu accepted the same in 18/08/2011. The 1<sup>st</sup> Defendant averred that "without prejudice" no such letter was written on 18/08/2010 purporting to allocate the plaintiffs land parcel No. Muguga/Gitaru/1654,1655, 1656 and 1657 to the National Government for the construction of District Headquarters. The 1<sup>st</sup> Defendant also submitted that the plaintiff did not provide a letter of allocation but then relied on the same letter dated 18/08/2010 in its submissions to contend that the suit property was allocated to the district commissioner for purposes of construction of the district headquarters.
55. In the case of *Rukaya Ali Mohamed vs David Gikonyo Nambacha & Another* (Kisumu HCCA No. 9 of 2009, the Court held that:-

“Once (an) allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment, since a letter of allotment confers (an) absolute right of ownership or proprietorship unless it is challenged by the allotting authority or is acquired through fraud, mistake or misrepresentation, or that the allotment was out rightly illegal or it was against the public interest. In other words, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled.”



56. In the case of *Lilian Waitibera Gachubi –vs- David Shikuku Mzee* (2005) eKLR the Court stated thus:-
- “I have no doubt that legally, a letter of allotment is an intention by the Government to allocate land. It is not a title. Therefore, a letter of allotment cannot be used to defeat title of a person who has been registered as the proprietor of the land.....”.
57. I equally would state that where it is established a valid title has been issued and the proprietor registered as the proprietor of the land a letter of allotment cannot dislodge that title. The Plaintiff produced a title demonstrating that it was registered as the proprietor of Muguga/Gitaru/1084 on 6/12/1993.
58. In the case of *Njuwangu Holdings Ltd –vs- Langata KPA Nairobi & 5 others* (ELC No. 139 of 2013), the court considered the status of a letter of allotment vis-à-vis a registered title. The Court rendered itself as follows:-
- “As matters now stand the plaintiff who has a registered title over the suit property has a superior title to that of the 1st Defendant who only holds a letter of allotment..... Equally it is my view that a letter of allotment cannot override a duly registered title under the Act and where there is a registered title and a letter of allotment over the same property barring any fraud on the part of the party holding the registered title, a letter of allotment must of necessity give way. The rights of a party who holds the registered title have crystallized as opposed to those of the party holding a letter of allotment which are yet to crystalize.”
59. From the foregoing, it is in no doubt that the Plaintiff is the registered proprietor of Muguga/Gitaru/1084 which was later sub-divided into Land Parcel No. Muguga/Gitaru/1644, 1645, 1646, 1647, 1648, 1649, 1650, 1651, 1652, 1653, 1654, 1655, 1656, 1657, 1658 and 1659. It is also not in dispute that land Parcel No. 1649 and 1650 was sold to Leah Wangui Githu and Land Parcel No. 1651 sold to William Kaniaru Gicharu.
60. Also, in other words, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled.
61. The Plaintiffs having been able to show the root of their title, the Court finds and holds that it has then proved that it is the absolute and indefeasible owner of the suit property.
62. With regard to compulsory acquisition, the Plaintiff also testified that the Government wished to construct the Southern By-Pass which was passing near his plots. That vide Gazette Notice No. 3788 dated 26/05/2006 gazetted the mother title no. Muguga/Gitaru/487 for compulsory acquisition. They did their investigation and found out that the intended compulsory acquisition would affect their sub-division namely: Muguga/Gitaru/1649, 1650, 1651 and 1659. They informed the NLC and KeNHA of the error and the same was rectified vide Gazette Notice no. 11990 of 23/08/2013 whereby NLC listed Muguga/Gitaru/1649, 1650, 1651 and 1659 for compensation purposes. The said land parcels were also gazetted vide Gazette Notice No. 8566 of 25/11/2014. It is the Plaintiff's evidence that they were fully compensated for the said acquisition.
63. The *Land Acquisition Act* Cap 295 (now repealed) clearly stipulated the procedure of compulsory land acquisition. The Act provided for the procedure that was to be followed when land was to be compulsorily acquired. The said land that was to be compulsorily acquired was to be indicated in the Gazette Notices and dates for inquiry were also to be set in another Gazette Notice. There were various Gazette Notices annexed to the pleadings and Muguga/Gitaru/1649, 1650, 1651 and 1659 were indicated in the said Gazette Notices as some of the parcels to be compulsorily acquired by the Government and compensation was also paid. It is evident that the 2<sup>nd</sup> Defendant followed due process



set out by the law under Article 40 (3) of *the Constitution*, section 107, 110 and 115 of the *Land Act* and the Land Acquisition Act (now repealed). From the evidence presented, the parties confirmed that the Plaintiff's land was acquired by the Government and compensation paid. Therefore, this court finds that Muguga/Gitaru/1649, 1650, 1651 and 1659 were procedurally acquired.

64. With regard to revocation of the titles Muguga/Gitaru/1644 to 1658, the Plaintiff averred that after the compulsory acquisition of Muguga/Gitaru/1649, 1650, 1651 and 1659, they found the remaining plots which were still under the Plaintiff's name fenced off and they were denied access thereto. They were shown correspondences; a letter dated 21/12/2016 purportedly addressed to the owners of the original parcel Muguga/Gitaru/1015 purporting to list titles to several parcels of land as due for review. To the letter, other letters were attached, dated 9/11/2016 and 18/08/2010 whereby some of the plaintiff's parcels were indicated as allocated to the Deputy County Commissioner Kikuyu and the County Government of Kiambu. Furthermore, there was a Gazette Notice No. 6862 of 17/07/2017 which had purported to nullify all the Plaintiff's titles including those which had already been compulsorily acquired. It is their contention that that they were never given notice, invited nor given an opportunity to be heard before the titles were nullified. The Plaintiff avers that the letter dated 21/12/2016 never reached them.
65. It is the 1<sup>st</sup> Defendant's submission that the 2<sup>nd</sup> Defendant invoked its power under section 14 of the NLC Act to review among others the Plaintiff's titles to determine their proprietary or illegality. That the review hearing was scheduled to be held on 27/01/2017 and the notice to review was also placed on Standard newspaper of 4/11/2016.
66. A look at the letter dated 21/12/2016 from NLC does not demonstrate that the same was served upon the Plaintiff. It appears that the Plaintiff's allegation that he never received a notice of the same is true. NLC did not come to court to rebut this allegation. Secondly, the letter is addressed to owners of plots (Originally Muguga/Gitaru/1015). From the evidence adduced in Court, the root of the Plaintiff's titles comes from Muguga/Gitaru/1084 excised from Muguga/Gitaru/487. In as much as Plot Nos. Muguga/Gitaru/1644, 1645, 1646, 1647, 1648, 1649, 1650, 1651, 1652, 1653, 1654, 1655, 1656, 1657, 1658 and 1659 were listed in the subject of the said letter, it is misleading as the said plot numbers stem from Muguga/Gitaru/1084 and not Muguga/Gitaru/1015.
67. Then again, there is a letter dated 18/08/2010 purporting to allocate Plot No. part 1655, part 1656 and part 1657 to the District Commissioner, Kikuyu for the construction of district headquarters. Looking at the evidence before me, NLC stated that they had received a complaint regarding Muguga/Gitaru/1644, 1645, 1646, 1647, 1648, 1649, 1650, 1651, 1652, 1653, 1654, 1655, 1656, 1657, 1658 and 1659 in 21/12/2016. They also allegedly published a notice in the newspapers on 4/11/2016 seeking to have a review hearing on 27/01/2017. There is a letter dated 9/11/2016 addressed to the NLC seeking to bring to their attention that Muguga/Gitaru/1015 had been sub-divided and yet it was for the construction of the Kikuyu Sub-County Headquarters. There was a Gazette Notice dated 28/07/2017 that canceled the title for Muguga/Gitaru 1084.
68. It appears the Plaintiff did not receive a notice regarding any complaint touching on their parcels of land. Therefore, the due procedure was not followed.
69. The letter dated 21/12/2016 was indeed a notice of review hearing of titles for Muguga/Gitaru/1015. However, there is no evidence in Court proving that the same was served upon the Plaintiff. Article 40 of *the Constitution* of Kenya provides that every person has the right to acquire and own property and Article 40 (2) observes that no one should be arbitrarily deprived of property or in any way restricted from the enjoying their own property. The Plaintiff was indeed not accorded fair administrative action as enshrined in Article 47 of Constitution.



70. Additionally, Article 68(c)(v) of *the Constitution* empowers Parliament to enact legislation to enable the review of all grants or dispositions of public land to establish their propriety or legality. Section 3(b) of the *National Land Commission Act* provides that one of the objects of the Act is to provide for the operations, powers, responsibilities and additional functions of the Commission pursuant to Article 67(3) of *the Constitution*. No doubt therefore that the *National Land Commission Act* is the legislation contemplated under Article 67(3) of *the Constitution*.
71. Section 14 of the *National Land Commission Act*, on the other hand provides that:
- “(1) Subject to Article 68(c)(v) of *the Constitution*, the Commission shall, within five years of the commencement of this Act, on its own motion or upon a complaint by the national or a county government, a community or an individual, review all grants or dispositions of public land to establish their propriety or legality.
  - (3) In the exercise of the powers under subsection (1), the Commission shall give every person who appears to the Commission to have an interest in the grant or disposition concerned, a notice of such review and an opportunity to appear before it and to inspect any relevant documents.
  - (4) After hearing the parties in accordance with subsection (3), the Commission shall make a determination.
  - (5) Where the Commission finds that the title was acquired in an unlawful manner, the Commission shall, direct the Registrar to revoke the title.
  - (6) Where the Commission finds that the title was irregularly acquired, the Commission shall take appropriate steps to correct the irregularity and may also make consequential orders.
  - (7) No revocation of title shall be effected against a bona fide purchaser for value without notice of a defect in the title.
  - (8) In the exercise of its power under this section, the Commission shall be guided by the principles set out under Article 47 of *the Constitution*.
  - (9) The Commission may, where it considers it necessary, petition Parliament to extend the period for undertaking the review specified in subsection (1).”
72. It was submitted that the decision by the NLC to proceed to revoke the titles in the Gazette notice as opposed to making recommendations for the revocation of the same is improper and tainted with illegality.
73. This contention calls for the interrogation of the powers of the National Land Commission. Section 14(5) and (6) of the *National Land Commission Act* provides as follows:
- “(5) Where the Commission finds that the title was acquired in an unlawful manner, the Commission shall, direct the Registrar to revoke the title.
  - (6) Where the Commission finds that the title was irregularly acquired, the Commission shall take appropriate steps to correct the irregularity and may also make consequential orders.”[emphasis added]



74. It is not in doubt that Section 14 of the *National Land Commission Act*, empowers the Commission to direct the Land Registrar to revoke any title that was acquired unlawfully. In this case to establish whether or not the Commission revoked the title as opposed to directing the revocation, this Court needed to see the said gazette Notice. Vide Kenya Gazette Notice No. 6862 of 17/07/2017, the NLC made a determination with respect to the suit parcels of land that the title be revoked. I agree that the proper decision would have been to direct the Registrar to revoke the title.
75. Further it is evident that the Plaintiff was not accorded a fair administrative action as it was not afforded any hearing before the revocation of the title vide Gazette Notice No. 6862 of 17/07/2017. The Plaintiff's contention that he never received the notice for the review hearing has not been rebutted and given that there is no evidence to the contrary, this Court has no option but to believe the said contention.
76. Having held that there is no evidence that the Plaintiff was afforded an opportunity to be heard before the decision to revoke his titles was made, it is the Court's considered view that the 2<sup>nd</sup> Defendant did not accord the Applicant fair administrative action which the Plaintiff was entitled to. See the case of *Republic Vs The Honourable The Chief Justice of Kenya & Others v exparte Moijo Mataiya Ole Keiwa*, Nairobi HCM CA No.1298 of 2004, the Court held that:-
- “The rules of Natural justice are minimum standard of fair decision making imposed by the common law on persons, or bodies that are under a duty to act judicially”.
77. On the prayer for general damages [prayer (e)], from the evidence on record, the Plaintiff has proved that the 1<sup>st</sup> Defendant/or his predecessor entered into the suit property, fenced it thereby denying the Plaintiff access and use of his suit property. There is however nothing in his evidence that can enable this court to determine the actual damage that they suffered so that it can order that they be compensated for the loss. In his submissions, the Plaintiff provided the value of Kshs. 25,000,000.00 with which the Court was to work with.
78. In the case of *Willesden Investments Limited vs. Kenya Hotel properties limited* NBI H.C.C. NO. 367 of 2000 (a case cited by the plaintiff), the court stated that;
- “There is no mathematical or scientific formula in these types of cases and that the guiding factors are the circumstances in each case. It is my considered view that Kshs. 10 000 000 is a reasonable award for general damages”.
79. I have taken into account the fact that the Plaintiff has not been in possession of the suit property since 2006 and the Plaintiff was unable to earn from this land. I am of the view that an award of Kshs. 5,000,000.00 as general damages are sufficient on account that the same was to be used as a factory.
80. On the issue of costs, I find that the Plaintiff is indeed entitled to costs as they have been inconvenienced. The mere fact that a demand may not have been issued is not, alone, a good reason to deny a successful party his costs of the suit.
81. The court is satisfied that the Plaintiff has proved his case on a balance of probabilities that they have a cause of action against the Defendants jointly and severally.
82. In the circumstances, I hereby proceed to enter Judgement for the Plaintiff against the Defendants as prayed in the Amended Plaint dated 15/02/2019, in the following terms: -



- a) A declaration be and is hereby issued that the purported allocation of any of the Title Nos. Muguga/Gitaru/1644 to 1658 inclusive or any other Title derived from Muguga/Gitaru/1084 by the 1<sup>st</sup> Defendant to the National Government or any other authority is illegal, null and void.
- b) A declaration be and is hereby issued that the purported cancellation of Title Nos. Muguga/Gitaru/1644 to 1658 by the 2<sup>nd</sup> Defendant is null and void.
- c) An order be and is hereby issued invalidating and cancelling the Gazette Notice No. 6862 dated 17<sup>th</sup> July, 2017 issued by the 2<sup>nd</sup> Defendant in so far as it purports to nullify Title Nos. Muguga/Gitaru/1644 to 1659 inclusive.
- d) A permanent injunction be and is hereby issued restraining the Defendants their agents / servants or any person(s) claiming through them from constructing, trespassing or any other way howsoever interfering with the Plaintiffs use of Land known as Muguga/Gitaru/1644,1645, 1646, 1647, 1648, 1652, 1653, and 1658.
- e) General Damages be and is hereby awarded in favour of the Plaintiff for the sum of Kshs. 5,000,000.00 only .
- f) I award the Plaintiff the costs of the suit plus interest from the date hereof until payment in full.

It is so ordered.

**DATED, SIGNED AND DELIVERED THIS 8TH DAY OF JUNE 2022**

.....

**MOGENI J.**

**JUDGE**

**In the presence of**

..... **for the Plaintiff**

..... **for the 1<sup>st</sup> Defendant**

..... **for the 2<sup>nd</sup> Defendant**

**Vincent Owuor Court Assistant**

