



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**PETITION NO. 107 OF 2010**

**IN THE MATTER OF: ARTICLE 19, 22, 23, 40, 47, 50 & 64 OF THE CONSTITUTION OF KENYA**

**IN THE MATTER OF: THE GOVERNMENT LANDS ACT AND THE TRUST LAND ACT**

**IN THE MATTER OF: CONTRAVENTION OF RIGHT TO PROPERTY**

**IN THE MATTER OF: THE PURPORTED REVOCATION OF TITLE; L.R. NO. 15410/1**

**BETWEEN**

**KURIA GREENS LIMITED ..... PETITIONER**

**AND**

**REGISTRAR OF TITLES ..... 1<sup>ST</sup> RESPONDENT**

**COMMISSIONER OF LANDS ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

On 26<sup>th</sup> November, 2010 the 1<sup>st</sup> respondent published a notice in the Kenya Gazette which was worded as follows:

**“Gazette Notice No. 15584**

**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”

The petitioner herein is the proprietor of **L.R. No. 15410/1**, hereinafter referred to as “**the suit land**”, one of the parcels of land listed in the aforesaid Gazette Notice. The petitioner moved to court by way of a petition dated 21<sup>st</sup> December, 2010 and sought the following reliefs:

- “(a) An order of certiorari do issue to bring into this Honourable court for the purposes of being quashed, the 1<sup>st</sup> respondent gazette notice number 15584 dated 26<sup>th</sup> November, 2010 purporting to revoke the petitioner’s title to all that parcel of land comprised in title number L.R. No. 15410/1.**
- (b) An order of prohibition do issue to prohibit the respondents by themselves, servants, agents or whomsoever from alienating the petitioner’s parcel of land comprised in title number L.R. No. 15410/1 or in any manner interfering with the petitioner’s possession of the said premises.**
- (c) An order of prohibition do issue to prohibit the respondents by themselves, servants, agents or whomsoever from in any manner issuing any title and/or licence in respect to the petitioner’s land comprised in title number L.R. No. 15410/1 or registering any encumbrance thereon.**
- (d) An order of mandamus do issue to compel the respondents by themselves, servants, agents to delete any entry on the petitioner’s Certificate of Title made as a consequence to or in furtherance of all that parcel of land comprised in title number L.R. No. 15410/1.**
- (e) A declaration that the respondents purported revocation of the petitioner’s title to all that parcel of land comprised in title number L.R. No. 15410/1 is unconstitutional, null and void.**
- (f) A declaration that the certificate of title to the petitioner in respect to the suit property is conclusive evidence of ownership and that the petitioner is the absolute and indefeasible owner of the suit property.**
- (g) Damages.**
- (h) Costs of and incidental to this suit”.**

The petition was supported by an affidavit sworn by **Simon K. Kuria**, a Director of the petitioner. The petition and the affidavit disclose the following:

The petitioner purchased the suit land from **Riangi Estates Limited** in November, 1993 at a consideration of Kshs.13 Million. The suit land measures approximately 16.8 hectares. The transfer was duly registered at the Land Titles Registry, Nairobi, and a Certificate of Title dated 21<sup>st</sup> December, 1993 issued to the petitioner. The petitioner has to date paid all the outgoings namely land rent to the 2<sup>nd</sup> respondent for all the years since the purchase of the suit land. The suit land is a tea plantation with fully

mature tea bushes and employing a work force of 110 people. There is an extensive labour lines for the employees. The said investment is a source of livelihood for all the 110 employees and their dependants. The value of the land itself is in excess of Kshs.80 Million.

Prior to publication of the said Gazette Notice the petitioner had never been informed of any intention to revoke its title and even after publication of the Gazette Notice there has been no other communication from the respondents to the petitioner with regard to the suit land.

The petitioner contended that the respondents do not have legal power to revoke its title and the purported revocation is illegal and amounts to a taking of its property without compensation. The respondents made a decision to expropriate the petitioner's land without according the petitioner an opportunity to be heard. The petitioner was not given any reason for the said decision.

The petitioner contended that the respondents had violated its constitutional right guaranteed by **Article 40** of the **Constitution of Kenya, 2010**, hereinafter referred to as "**the Constitution**". The respondents' purported revocation of the petitioner's title to the suit land also violates **Article 47(1)** of the **Constitution** in that no reason was given for the aforesaid act or decision.

The respondents were served with the petition and an application dated 21<sup>st</sup> December, 2010 together with conservatory orders that were issued by this court. On 13<sup>th</sup> January, 2011 the Attorney-General filed a memorandum of appearance for and on behalf of the respondents. On 24<sup>th</sup> January, 2011 the court directed the Attorney-General to file his response to the petition within 14 days from the said date but upto 12<sup>th</sup> May, 2011 when the petition was heard no response to the said petition had been filed by any of the respondents.

Mr. Ngatia for the petitioner filed written submissions and a list of authorities and chose to rely on the same entirely. Mr. Ngatia's diligence in preparation of the concise submissions is commendable.

The first issue for determination is whether the 1<sup>st</sup> respondent has power to revoke a Certificate of Title under the Registration of Titles Act or any other law.

In Gazette Notice No. 15584 vide which the 1<sup>st</sup> 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 1<sup>st</sup> 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 Lands Act and the Land Control Act and I did not come across any provision that grants power to a Registrar of Titles or the Commissioner of Lands to arbitrarily revoke a valid land title.

In my view therefore, the Registrar of Titles exceeded his power and thus acted *ultra vires* in purporting to revoke the petitioner's title. There can be no dispute that an *ultra vires* act by a public authority is unlawful. In **REPUBLIC vs KISUMU DISTRICT LANDS OFFICER & ANOTHER, Miscellaneous Application No. 80 of 2010 (eKLR)** the court held that:

**"...it is clear that it is only the court that cancel or amend a title where the court is of the view that registration has been obtained, made or omitted through fraud or mistake and only where it is not a first registration."**

The decision taken by the 1<sup>st</sup> respondent is contrary to the petitioner's constitutional right to protection of its property guaranteed under **Article 40** of the **Constitution**. **Article 40(1)** of the **Constitution** provides as hereunder:

**"Subject to article 65, every person has the right, either individually or in association with**

**others, to acquire and own property –**

**(a) of any description; and**

**(b) in any part of Kenya.”**

**Article 40(2)** states that Parliament shall not enact a law that permits the State or any person to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description or limit in any way the enjoyment of any right under this article on the basis of any of the grounds specified or contemplated in **Article 27(4)**.

The 1<sup>st</sup> respondent's action amounted to state taking of the petitioner's property without compensation contrary to the provisions of **Article 40(3)** which stipulates that:

**“The State shall not deprive a person of property of any description of any interest in, or right over, property of any description unless the deprivation;**

**(a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land in accordance with Chapter Five; or**

**(b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that –**

**(i) requires prompt payment in full, of just compensation to the person; and**

**(ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.”**

The 1<sup>st</sup> respondent was well aware that the petitioner was a lawful purchaser for value of the suit land. The 1<sup>st</sup> respondent issued a Certificate of Title to the petitioner on 21<sup>st</sup> December, 1993. Under **Section 23** of the **Registration of Titles Act** a Certificate of Title issued by the Registrar to any purchaser of land is to be taken by all courts as conclusive evidence that the person named therein as the proprietor of land is the absolute and indefeasible owner thereof. The court in **SAMUEL MURIMI KARANJA & 2 OTHERS VS REPUBLIC HCCC Criminal Application No. 412 OF 2003** cited with approval the holding made by the court of appeal in **JOSEPH ARAP NGO'K VS JUSTICE MOIJO OLE KEIWUA, NAI Civil Application No. 60 of 1997** as follows:

**“Section 23(1) of the Act gives an absolute and indefeasible title to the owner of the property. The title of such owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is proved to be a party. Such is the sanctity of title bestowed upon the title holder under the Act. It is our law and law takes precedence over all other alleged equitable rights of title. In fact the Act is meant to give such sanctity of title, otherwise the whole process of registration of titles and the entire system in relation to ownership of property in Kenya will be placed in jeopardy”.**

Even assuming there was fraud or misrepresentation in alienating the suit land to the original registered proprietor, the petitioner was not party to such fraud or misrepresentation. The petitioner lawfully purchased the suit land from Riangi Estates Limited and obtained all the necessary consents and invested heavily on the suit land. The 1<sup>st</sup> respondent could not therefore purport to arbitrarily revoke its title without any notice and most importantly, without following the due process of law. Due process must be adhered to by all, the State and its citizens.

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.

**Article 47** of the **Constitution** grants every person a right to fair administrative action. **Subsections (1)** and **(2)** thereof state that:

**“(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.**

**(2) If a right of fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action”.**

In addition, **Article 50** guarantees a right to a fair hearing. **Article 50(1)** provides that:

**“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body”.**

The 1<sup>st</sup> respondent ought to have given the petitioner an opportunity to state its case before reaching the decision that has such far reaching ramifications. The petitioner ought to have been called upon to explain how it had acquired the suit land, considering that the 1<sup>st</sup> respondent had himself issued a Certificate of Title to the petitioner.

The impugned decision by the 1<sup>st</sup> respondent not only violated the petitioner's aforesaid constitutional rights but was also unreasonable and contrary to its legitimate expectation. Referring to a party's legitimate expectation, Lord Simon Brown in **R vs DEVON COUNTY COUNCIL ex parte P. BAKER**, [1995] 1 ALL ER, stated:

**“...it is the interest rather than the benefit that is the substance of the expectation. In other words, the expectation arises not because the claimant asserts any specific right to a benefit but rather because his interest in it is one that the law holds protected by the requirements of procedural fairness; the law recognizes that the interest cannot properly be withdrawn (or denied) without the claimant being given an opportunity to comment and without the authority communicating rational grounds for any adverse decision”.**

Similarly, in **COUNCIL OF CIVIL SERVICE vs MINISTER FOR CIVIL SERVICE** [1984] 3 ALL ER 935 at page 949, Lord Diplock stated that for a legitimate expectation to be thwarted, the impugned decision:

**“...must affect such other person either (a) by altering rights or obligations of that person which are enforceable by or against him in private law or (b) by depriving him of some benefit or advantage which either (i) he has in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational ground for withdrawing it on which he has been given opportunity to comment or (ii) he has received assurance from the decision maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn”.**

It is therefore clear that a benefit, (but in this case a right) cannot be withdrawn until the reason for its withdrawal has been given and the person concerned has been given an opportunity to comment on the reason.

For the aforesaid reasons, the orders of certiorari, prohibition and mandamus sought by the petitioner in terms of prayers (a), (b), (c) and (d) are hereby granted. It is further declared that the respondents' purported revocation of the petitioner's title to the suit land is unconstitutional, null and void. Further, it is hereby declared that the Certificate of Title to the petitioner in respect to the suit land is conclusive evidence of ownership thereof and the petitioner is the absolute and indefeasible owner of the suit land.

Although the petitioner prayed for damages, it was not demonstrated that any damages are payable and consequently I will not grant that prayer. The respondents will however bear the costs of this petition.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF JUNE, 2011.**

**D. MUSINGA**  
**JUDGE**

**In the presence of:**

**Nazi – Court Clerk**

**Mr. Ngatia for the Petitioner**

**Mr. Mwendwa for the Respondents**