



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
LAND AND ENVIRONMENTAL LAW DIVISION
CIVIL SUIT (ELC) NO.617 OF 2010

DAVID NJOROGE NGURU.....PLAINTIFF

VERSUS

THE COMMISSIONER FOR LANDS.....1ST DEFENDANT
IBRAHIM MURIUKI IMBICHO.....2ND DEFENDANT

R U L I N G

1. David Njoroge Nguru, hereinafter referred to as the applicant, filed a suit against the Commissioner of Lands seeking orders against the Commissioner for:

- a) An order directing cancelation of a lease dated 16th June, 1997 and certificate of lease dated 31st August, 2010.
- b) An order directing registration and issuance of a new lease and certificate of lease to the plaintiff.
- c) An order removing the restriction placed on the title of the suit premises.
- d) Costs of the suit.

2. By an amended plaint filed on 1st March, 2011, the applicant brought in Ibrahim Imbicho Muriuki as a 2nd defendant although the prayers remained the same. In the meantime the applicant had filed an application dated 31st November, 2010 under section 17, 138 and 139 of the Registered Land Act for orders as follows:

- a) Spent
- b) The Commissioner of lands be ordered to cancel the lease issued on 16th June, 1997 and certificate of lease dated 31st August, 2001 and a new certificate of lease be issued to the applicant.
- c) The register of lease be amended and corrected accordingly.
- d) The restriction placed on the title be removed.

3. The application was based on the grounds that the original lease and certificate of lease issued, were issued irregularly and or forged, and do not reflect the true status of ownership; that the register of lease ought to contain proper and true details of the proprietor; and, that the applicant needs to develop his plot but cannot do so without proper documents of title to the land. Although the Commissioner of Lands was

served with the application and a hearing notice for the hearing of the application, there was no response to the application nor was there any appearance on behalf of the Commissioner. Hearing of the application therefore proceeded *ex parte*, and the court was therefore urged to grant the orders sought.

4. Under section 17 of the Registered Land Act, the Registrar has powers to cancel any entry in the register which the Registrar is satisfied has ceased to have any effect. Section 138 also gives the Registrar powers to order the removal or variation of a restriction. Therefore it is evident that the Registrar has powers under the cited provisions to take appropriate action. However, Registrar is defined under section 3 of the Registered Land Act as the Chief Land Registrar or the Deputy Land Registrar, or an Assistant Land Registrar. That definition does not include the Commissioner of Lands. Further, it is apparent from the prayers sought in the plaint as aforesaid, that the prayers are identical with the prayers sought by the applicant in this application. Although it is evident that there has been no response to the application nor has there been any defence filed, the applicant ought to have proceeded by way of formal proof and not by way of summary judgment as he has purported to do.

5. The afore cited provisions do not give the Registrar summary powers. Action can only be taken after the Registrar has heard any interested party. Moreover, to grant the orders sought will have the effect of prematurely determining the issues raised in the plaint. Regrettably, although this application was unopposed, I have no option but to dismiss it. Those shall be the orders of this court.

Dated and delivered this 22nd day of July, 2011

H. M. OKWENGU
JUDGE

In the presence of: -
Ogudo H/B for Masinde for the plaintiff
Advocate for the defendant absent
Kosgei - Court clerk