



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Petition 82 of 2010

JOHN MUKORA WACHIHI..... PETITIONER

VERSUS

MINISTER FOR LANDS..... 1ST RESPONDENT

COMMISSIONER OF LANDS..... 2ND RESPONDENT

THE CHIEF LAND REGISTRAR..... 3RD RESPONDENT

RULING

John Mukora Wachihi filed this petition against the Minister for Lands, Commissioner of Lands and Chief Land Registrar on 10/3/2010. The Petitioner seeks to enforce his rights guaranteed under Ss 70 (c) and 75 (1) of the Constitution. Filed simultaneously with the petition is the chamber summons dated 9/3/2010 in which the Applicant seeks conservatory orders directed at the Respondents or their agents, to stop revocation and cancellation of the lease of parcel No. THIKA/MUNICIPALITY/BLOCK 7/147 until this petition is heard and determined and secondly a conservatory order to stop the Respondents from taking possession, transferring or alienating the said suit premises until this petition is heard and determined.

The petition is supported by the affidavit in support of the petition, sworn by the Petitioner. Mr. Charles Kariuki counsel for the Applicant filed 10 other suits in which similar orders as the present suit are sought. The order that will be granted herein will therefore apply to —

1. Petition 83/2010 Nicholas Njau Njuguna V Minister for Lands Commissioner for Lands and the chief Lands Registrar.
2. Petition 84/2010 Grace Njeri Gichuhi Ngari V Respondents.
3. Petition 85/2010 Paul Njogu Ndungu V Respondents.
4. Petition 86/2010 Johnson Mwangi Ciigu V Respondents
5. Petition 87/2010 Samwel Gichango Njuguna V Respondents.
6. Petition 88/2010 Elijah Gatheaga Ngugi V Respondents.

7. Petition 89/2010 Jacob Kariuki V Respondents
8. Petition 90/2010 Joan Wambui Mwangi V Respondents
9. Petition 92/2010 Fidelity Holdings Ltd. V Respondents

Petition No.91 was withdrawn by Counsel before the Hearing commenced. The Petitioner's case is that he applied to the 2nd Respondent for a plot at Thika. It was allocated to him once the Government processes were undertaken and the necessary dues paid. The DC Thika confirmed to the 2nd Respondent that there were uncommitted plots. That a development plan was prepared by the District Physical Planning Officer and it was forwarded to the 2nd Respondent and he was issued with an allotment letter of the vacant plot. He paid the necessary dues and rates to the Thika Municipal Council. It was surveyed and he was issued with a lease dated 24/8/01 which was registered on 27/11/02 – (JMI 2 and 3). On 24/1/07 a circular was issued by the Ministry of Lands validating the allocation and valuation of the plots (JM 4). Valuation and assessment of the structure put the figure at Kshs.1,160,000/= vide letter of 8/4/08 (JM 7). He paid the said sums JM 8 – 17 and it was acknowledged vide letter JM 18.

Later, the 1st Respondent published a press release in the Local Daily JM 19 and 20 purporting to revoke the said allocation and the official search dated 4/3/2010. A restriction was placed on the plot on 17/8/05 prohibiting any dealings with the said land (JM 21). The Petitioner contends if the 1st Respondent's directive is implemented, he will be deprived of his property without compensation or due process being followed and his rights under S 70 (c) and 75 (1) of the Constitution will be breached. Mr. Kariuki urged that the status quo ought to be preserved so that the Applicants are heard on the petition and that the Respondents will not suffer any prejudice.

The Respondents did not file any replying affidavit despite the fact that they had been given time to do so. Ms Natome, counsel for the Respondents urged that the Applicants have not demonstrated what rights will be breached. That the sale is tainted with illegality because the Government intended to sell non-strategic Houses as evidenced by Annexure JM 4 in which invited civil servants to bid for sale of non strategic Government Houses. That as evidenced by JM 6, the house in question is a strategic Government House not a non strategic. That the house in question was not available for sale. That if the Petitioner was a civil servant, he should have applied for the non-strategic House. That the sale was void *ab initio* and orders cannot be issued to perpetuate an illegality. Ms Natome submitted that Petition 83/2010 is incompetent because it is brought by the legal representative of the Applicant and yet S 84 (1) provides that the person whose rights have been infringed or likely to be infringed can bring an application on behalf of a detained person but a legal representative is not envisaged. She also urged that Petition 84/2010 is also incompetent since the Applicant is a business name. She urged the Petition 89 and 92/2010 are also brought in business names and that in any event the land in issue was already allocated and would not be allocated again.

For a conservatory order to issue, the principles applicable in the grant of temporary injunctions do apply and they are that one must demonstrate that he has a prima facie case with chances of success, that if the order is not granted, the Applicant will suffer irreparably and if the court is in doubt then it should decide the case on a balance of convenience (see *GIELLA V CASSMAN BROWN 1973 EA*).

S 123 (1) of the Constitution defines a person as including a body of persons, corporate or unincorporate. The petitioners in Petitions 84/2010 and 88/2010 describe themselves by their trade names. They fall under the description given under S 123 of the Constitution. They

are properly before this court. In Petition 83/2010, the applicant has brought the petition as legal representation of a deceased person. He exhibited confirmation of grant and he is named as the 2nd administrator of the estate of the deceased. He is the proper legal person to represent the deceased's estate because the court has allowed him.

The Respondents did not file any affidavits to rebut Applicant's facts or show how the plot was allocated to the Applicant. I have seen the 2 annexures JM 4 dealing with Non- strategic houses and JM 6 dealing with Strategic Houses. In my view, it is upon the Respondent to demonstrate through evidence that the Applicant's house was not one of those slated for sale and whether the officials who allocated the house to the Petitioner did so unlawfully. It is not sufficient to make submissions from the bar. The applicant has shown that the house was allocated to him by Government Officials, he has paid substantial monies in respect of the property and prima facie, he has demonstrated that he has a valid interest in the land and stands to suffer irreparably if a conservatory order is not granted.

If indeed the property was transferred to him in the proper manner, then the Respondent would need to follow due process in acquisition of the said land.

The Applicant's complaint is that he has a lease over the property, and therefore has an interest in the property and that is why he invokes S75 (1) of the Constitution. That raises an arguable case as to whether the lease can be revoked without due process under S 75 of the Constitution.

I do find that the petitioner has raised an arguable case with chances of success and I hereby grant conservatory orders for 60 days in terms of prayer 2 and 3 of the chamber summons dated 9/3/2010. The court will give directions on how the petition should be heard expeditiously.

These orders will apply to the other petitions in 83, 84, 85, 86, 87, 88, 89, 90 and 92/2010.

Costs to abide the petition.

Dated and delivered at Nairobi this 26th day of March 2010.

R.P.V. WENDOH

JUDGE

Present: _____

Ms Kathambi holding brief for Mr. C. Kariuki for Petitioner

Ms Natome for Respondent

Muturi: Court clerk