



**Ngatia v National Land Commission & another (Environment & Land
Petition 10 of 2021) [2022] KEELC 12698 (KLR) (4 August 2022) (Judgment)**

Neutral citation: [2022] KEELC 12698 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION 10 OF 2021
EK WABWOTO, J
AUGUST 4, 2022
(FORMERLY HIGH COURT PETITION NO. 170 OF 2019)
IN THE MATTER OF ARTICLES 22 AND 23 OF THE
CONSTITUTION OF KENYA
AND
IN THE MATTER OF AN ALLEGED OR APPREHENDED
CONTRAVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER ARTICLES 40, 47 & 60 OF THE
CONSTITUTION OF KENYA
AND
IN THE MATTER OF AN ARTICLES 2(1), 2(4), 10 OF THE
CONSTITUTION OF KENYA
AND
IN THE MATTER OF THE CONSITUTION OF KENYA
(PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS)
PRACTICE AND PROCEDURE RULES, 2013
BETWEEN

BETWEEN
PETER MUREITHI NGATIA PETITIONER
AND
NATIONAL LAND COMMISSION 1ST RESPONDENT
NAIROBI COUNTY GOVERNMENT 2ND RESPONDENT



JUDGMENT

1. The Petitioner in the Amended Petition dated November 30, 2021 seek the following reliefs: -
 - a. A declaration that the respondent's decision to revoke the petitioner's title to L.R. No 209/13539/154 without hearing representations from the petitioner violated the Petitioner's right to fair administrative action and right to property.
 - b. An order of certiorari do issue to call into this court and quash the determination, decision orders made by the Respondent to revoke the Petitioner title to L.R. No. 209/13539/154 as communicated via Kenya gazette Vol CXIX-No. 97 gazette notice 6862 dated July 17, 2017.
 - c. An order do issue that the petitioner's title LR No. 209/13539/154 be expunged from the Kenya Gazette Vol CXIX- No. 97 gazette notice 6862 dated July 17, 2017.
 - d. That cost of the Petition be awarded to the Petitioner.
 - e. Any other reliefs this Honourable Court may deem fit to grant.
2. The Petitioner's case as presented in the Amended Petition and supporting affidavit sworn by Peter Muriithi Ngatia is that, the Petitioner is the registered proprietor of L.R No. 209/13539/143 the suit property herein together with his late father Joseph Mute Ngatia.
3. The petitioner has held leasehold interests in the suit property until July 17, 2017 when the 1st respondent purported to reach a determination published in the Kenya gazette under Vol. CXIX No. 97 gazette Notice 6862 at paragraph 4265 revoking the title to the parcel of land held by the Petitioner. The said actions by the 1st respondent contravened article 40, 27, 47, 48 and 50 of the Constitution.
4. The 1st and 2nd respondents despite being served never filed any response to the Petition and neither did they participate in the proceedings herein.
5. Having carefully considered the Petition and parties' submissions and noting that the 1st and 2nd respondents have failed to file both response and submissions to the Petition, the main issue that arise for determination is whether the Petition herein is merited.
6. The issues raised by the petitioner herein are on violation of fundamental rights, which this court has jurisdiction to hear and determine by virtue of article 165 (3) (b) and (d) of the Constitution. This court also by virtue of Article 23(3) of the Constitution has the power to grant the orders sought in the Petition. The Petition in my view raises constitutional issues which this court is mandated to determine.
7. The petitioner submitted that the 1st Respondent's decision to revoke their title in L.R. 209/13539/143 contravened their right under articles 10, 40, 47, 50, 60, 67 and 68 of the Constitution since the said revocation was not done within the confines of the law. The Petitioner urged that they were not given a chance to be heard on the manner in which they acquired the suit premises or given written reasons for the said deprivation contrary to article 47(1) and (2) of the Constitution. In support of the aforesaid reliance is placed on the case of *Mwangi Stephen Murithi vs National Land Commission and others* [2018] eKLR.



8. In the present case, the rules of natural justice were also not followed. The 1st respondent did not consult nor give the Petitioner an opportunity to be heard before revoking his title. The petitioner were not given an opportunity to present his claim, or defend himself against the respondents claim that the property was acquired fraudulently and without the due legal process. Hence a contravention of articles 47, 48 and 50 of the Constitution. To this extent I do agree with the petitioner that such action by the 1st respondent violated constitutional principles hence unconstitutional.
9. However this court is also guided by the decision in the case Milimani ELC No. 2054 of 2007 *KACC v Paul Moses Ngetha & anor* (2020) eKLR where the court held that the titles listed in the Kenya Gazette Vol CXIX -No. 97 gazette notice No. 6862 which by extension includes the Petitioner's property was acquired illegally a fact proven by the said decision and therefore this court cannot grant the orders sought. Well going by the decision of the Environment and Land Court, the suit premises were acquired without following the due legal process hence the Petitioner had no claim to it.
10. It is worth noting that the judgment being referred to was delivered on February 27, 2020 while this Petition was instituted in 2016. By the time this Petition was being instituted the 1st respondent as discussed above did not have the mandate to revoke the petitioners' titles. Hence the said action by the 1st respondent was not justified at the time they issued the Gazette Notice revoking the Petitioners' titles and was thus unconstitutional.
11. One cannot however negate the fact that the said decision has an impact on the orders being sought by the petitioner herein. Having read the said decision, it is clear that the requirements under the Government Lands Act and the Local Government Act were not complied with, hence the process was illegal and no title could pass to the Petitioner as held by the learned Judge. As noted, the Petitioners' rights to the property under article 40 of the *Constitution* were violated at the time the 1st respondent issued the Gazette Notice as the 1st Respondent did not have the power to revoke the titles without hearing the Petitioner or without a court order. The court order is now in place.
12. The Court in the ELC case held that the defendant in that case did not have a valid title and made reference to the case of *Daudi Kiptugen v Commissioner of Lands & 4 others* [2015] eKLR where the court stated that: -

“...the acquisition of title cannot be construed only in the end result; the process of acquisition is material. It follows that if a document of title was not acquired through a proper process, the title itself cannot be a good title. If this were not the position then all one would need to do is to manufacture a Lease or a Certificate of title at a backyard or the corner of a dingy street, and by virtue thereof, claim to be the rightful proprietor of the land indicated therein.”
13. Looking at the prayers sought by the Petitioner herein and what has since transpired, it is clear that the said prayers have been overtaken by events by virtue of the said Judgment and granting the said orders would be an exercise in futility and an academic exercise as the Petitioner does not have valid titles to the properties they are claiming hence no right to property. It is therefore impracticable to enforce the orders sought even if this Court granted them. The court cannot grant orders in vain as held by Mativo J. in *Daniel Kaminja & 3 others (suing as Westland Environmental Caretaker Group) v County Government of Nairobi* [2019] eKLR. This suit should therefore be dismissed.
14. In conclusion, the upshot is that the orders sought in the Petition cannot be granted in view of the fact that the same has been overtaken by events as outlined herein above and by virtue of ELC Court Judgment in ELC 2054 of 2007 *KACC v Paul Moses Ngethe & another* (2020) eKLR. I find that



court cannot issue orders in vain as granting the orders sought herein would be futile and an academic exercise. The Petition herein is not merited and the same is accordingly dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 4TH DAY OF AUGUST, 2022.

E. K. WABWOTO

JUDGE

In the presence of

Mr. S.N Ng'ang'a for the Petitioner

N/A for 1st Respondent

N/A for the 2nd Respondent

E. K. WABWOTO

JUDGE

