



**Republic v National Land Commission; Kiambu County Government
(Interested Party); Rimberia (Exparte Applicant) (Judicial Review Application
8 of 2019) [2022] KEELC 4909 (KLR) (20 September 2022) (Judgment)**

Neutral citation: [2022] KEELC 4909 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
JUDICIAL REVIEW APPLICATION 8 OF 2019
BM EBOSO, J
SEPTEMBER 20, 2022**

BETWEEN

REPUBLIC APPLICANT

AND

NATIONAL LAND COMMISSION RESPONDENT

AND

KIAMBU COUNTY GOVERNMENT INTERESTED PARTY

AND

ARTHUR KIRIMI RIMBERIA EXPARTE APPLICANT

JUDGMENT

1. Pursuant to the leave granted by Gacheru J on 2/4/2019 in Thika Misc Application No 18 of 2019 [the said file was on 21/5/2019 consolidated with the present file], the exparte applicant, Arthur Kirimi Rimberia, brought a substantive motion dated 17/4/2019, seeking an order of certiorari, quashing the decision published by the National Land Commission [the respondent] in the Kenya Gazette on 9/11/2018, as Gazette Notice on 11714, in relation to land parcel number Juja/Kiaura Block 2/316 [the suit property]. He further sought an order prohibiting the respondent against recommending revocation of the title relating to the suit property. Through the impugned decision, the respondent directed the Chief Land Registrar to revoke the ex-parte applicant’s title relating to the suit property, contending that the suit property had been reserved as a public utility plot.
2. The motion was supported by the statement of facts dated 17/4/2019 and the exparte applicant’s verifying affidavit sworn on 17/4/2019. It was canvassed through written submissions dated 29/9/2021.



3. The exparte applicant's case is that he is the registered proprietor of the suit property, by virtue of a certificate of lease issued to him by the Department of Lands on 13/3/2008. He contends that the suit property has never been a public utility plot. He further contends that the previous proprietor of the suit property was Chai Housing Co-operative Society Limited, a private entity.
4. Relying on the definitions of "public land" and "private land" in Articles 62 and 64 of the Constitution, the exparte applicant contends that the suit property was and is private land and that the respondent did not have grant review jurisdiction over it. The exparte applicant adds that the decision of the respondent directing the Chief Land Register to revoke his title was unreasonable; in bad faith; an abuse of power; and was made ultra vires. He further contends that the decision was contrary to the provisions of Section 14 of the National Land Commission Act and was made in violation of the rules of natural justice. He adds that the decision was made without jurisdiction because it was taken outside the ambit of the law. He contends that the impugned decision had deprived him the right to actualize the planned user of the suit property in that he has been denied the opportunity to develop a nursery school on the land. The exparte applicant argues that there was no evidence on record to suggest that the suit property was public land. He urges the court to grant the judicial review orders.
5. The respondent opposed the motion through a replying affidavit sworn on 11/4/2022 by its Director of Legal Affairs, Mr Brian Ikol. In addition, the respondent filed written submissions dated 11/4/2022 through Ms Cecilia Masinde Advocate.
6. The case of the respondent is that Article 68(c)(v) of the Constitution and Section 14 of the National Land Commission Act granted it the mandate to review past grants and dispositions relating to public land, either on its own motion or upon receipt of a complaint, with a view to establishing the legality or propriety of the grants and dispositions. It contends that in the course of carrying out that mandate, it received a complaint from residents/members of Chai Estate Welfare Group/ Chai Co-operative Housing Society, alleging that the suit property had been reserved for public use but had been converted into private land. Following the complaint, it conducted grant/disposition review proceedings at Thika Town Hall Chambers, during which exercise all parties submitted their documents and made oral presentations.
7. The respondent contends that "since public land is never available for allocation", it exercised the powers conferred in it under Article 68 (c) (v) of the Constitution and Section 14 (4) and (5) of the National Land Commission Act and recommended that the exparte applicant's title be revoked and the land does vest in Kiambu County Government.
8. The respondent contends that the mere fact that the suit property was registered as private land did not put it outside the grant review jurisdiction. It contends that it had jurisdiction to investigate the process through which the exparte applicant obtained his title to the suit property.
9. Relying on the decision in Republic v National Land Commission; Exparte Krystalline Salt 334 of 2014, and the decision in Republic v National Land Commission; exparte Holborn Properties Limited (2016) eKLR, the respondent submits that the fact that a piece of land was registered as private land did not put it outside the review mandate of the Commission.
10. I have considered the motion, the response to the motion, and the rival submissions of the parties. I have also considered the relevant legal frameworks and jurisprudence. Parties to the motion did not frame a common statement of issues to be determined by the court. Having looked at the pleadings and the respective parties' submissions, the key issue that falls for determination in this motion is whether the National Land Commission had jurisdiction to render the impugned decision.



11. The ex parte applicant contends that the suit property has never been public land, hence the Commission had no jurisdiction to exercise its grant review mandate over the title. The ex parte applicant exhibited a certificate of lease dated 13/3/2008. He also exhibited a lease registered on the same day in the name of Chai Housing Co-operative Society Limited, a body described as being duly incorporated under the Societies Act. The lease is expressed as having been issued to the Society in pursuance of a surrender. The surrender was, however, not exhibited. The court does not, in the circumstances, know the terms of the surrender that gave rise to the lease and to the title which the Society subsequently conveyed to the ex parte applicant.
12. The affidavit filed by the Commission is bare. It does not contain any supporting documentary evidence which the Commission relied upon to come to the conclusion that it had jurisdiction to direct revocation of the title. In my view, for the Commission to order revocation of the title, it had to establish that the title related to what previously existed as public land; and that the hitherto public land had been irregularly disposed. The Commission did not present to the court evidence to establish that aspect or to controvert the ex parte applicant's contention that the suit property was never public land.
13. That is not all. It is clear from the Gazette Notice that the impugned decision was published on 9/11/2018, long after the five year period which the Commission had been granted to undertake review of grants and dispositions relating to public land [under Section 14(1) of the [National Land Commission Act](#)] had lapsed. It is therefore apparent that besides failing to demonstrate that the suit property previously existed as public land, the Commission purported to exercise grant review jurisdiction long after its mandate had lapsed.
14. For the above reasons, this court agrees with the ex-parte applicant and finds that the Commission acted outside its statutory mandate. The impugned decision was ultra vires to that extent. The result is that the impugned decision stands to be quashed and is hereby quashed. However, because the court was not furnished with a copy of the surrender that gave rise to the ex parte applicant's title, and does not, in the circumstances, know the precise terms or conditions of the surrender that gave rise to the title, any party wishing to challenge the legality of the said title will be at liberty to do so through an ordinary civil suit.
15. Because of the public nature of the decision which gave rise to this judicial review motion, parties shall bear their respective costs of the suit.
16. In the end, the notice of motion dated 17/4/2019 is allowed in terms of prayer (a) only.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 20TH DAY OF SEPTEMBER 2022

B M EBOSO (MR)

JUDGE

In the Presence of: -

Mr Wekesa holding brief for Mr Mungai for the Ex-Parte Applicant

Ms Masinde for the Respondent

Court Assistant: Sydney

