



Muhsin v Registrar of Titles & 3 others (Environment & Land Petition 12 of 2019) [2022] KEELC 13710 (KLR) (26 October 2022) (Judgment)

Neutral citation: [2022] KEELC 13710 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND PETITION 12 OF 2019
NA MATHEKA, J
OCTOBER 26, 2022**

BETWEEN

ABDULKARIM SALEH MUHSIN PETITIONER

AND

THE REGISTRAR OF TITLES 1ST RESPONDENT

THE NATIONAL LAND COMMISSION 2ND RESPONDENT

THE KENYA REVENUE AUTHORITY 3RD RESPONDENT

THE ATTORNEY GENERAL 4TH RESPONDENT

JUDGMENT

1. The Petitioner states that he is the Registered owner of property known as LIR. No. MN/ 1/3092 situated in Nyali within Mombasa County. That the 2nd Respondent is charged with compulsory acquisition and compensation of private land in Kenya as provided under Article 40(2) and (3) of [the Constitution](#). The 1st Respondents, the Registrar of Titles Mombasa, did on June 6, 2011 *vide* Kenya Gazette purport to cancel, revoke the Petitioner's titles to the aforementioned suit properties on the basis that the same had been reserved for Kenya Revenue Authority. The Petitioner states that no notice of the Registrar's intention to revoke the Petitioner's titles has ever been given to him. The Petitioner further avers that there has never been any Court proceedings and or order revoking the Petitioner's title to the suit property. The Petitioner avers that the Registrar's decisions of June 6, 2011 purporting to revoke and or cancel the Petitioner's titles to the said properties is illegal and null and void as they were done in excess of powers of the Registrar since the said Registrar had no power whether under [the Constitution](#) or the *Registration of Titles Act* Cap 281 (now repealed) to revoke Certificate of Titles issued under the said Act. The Petitioner further avers that he has not received any compensation from the government regarding the said parcel of land. * * * That the 3rd Respondent has taken ownership



of the suit property without compensating the Petitioner, thus have occasioned the Petitioner loss and damage. The petitioner prays that this honorable court do decree as follows;

1. A declaration that the Respondents' decision to arbitrarily and capriciously revoke the Petitioner's titles to parcel of land number, LR NO.MN/1/3092 is in breach of Article 3, 10, 27, 40 47 and 50 (1) of *the Constitution* of Kenya.
2. A declaration that the decision of the Registrar of Titles Mombasa, dated June 6, 2011 and contained in the Kenya Gazette Volume CXI No. 51 Gazette Notice No.6332 purporting to revoke, and or cancel the Petitioner's titles to Parcels Number LIR No.MN/ 1/3092 is a nullity.
3. A declaration that the Certificate of Titles of the Petitioner to the parcel of land known as, LIR No.MN/ 1/3092 remain valid and conferring legal and beneficial title thereto the Petitioner and until defeated by a decree of the high court upon due process.
4. That this Honourable Court directs the Registrar of Lands Mombasa to cancel any change of ownership from the Petitioner herein and to reinstate Petitioner's titles and maintain proper land records at the land registry Mombasa for the Petitioner's titles to parcel of land known as LR No. MN/ 1/3092.
5. An order of prohibiting that this Honourable Court grant an injunction restraining the Registrar of Titles and / or County Land Registrar Mombasa County by themselves, their officers, employees, or agents from taking any act of furthering the purported revocation of titles and or making decision to take possession of the properties known as LIR No.MN/1/3092.
6. Costs of the proceedings be provided.
7. General damages for breach of Article 47 of *the Constitution*.
8. Such other order or reliefs as this Honourable Court shall deem just.
9. In the alternative to the foregoing, the Petitioner seeks a declaration that:
 - a. Pursuant to Article 40(3)(b)(1) of *the Constitution*, the Petitioner is entitled to immediate compensation at the current market value of the suit property.
 - b. In view of the conduct of the Respondents, the Petitioner is entitled to special damages in respect of all such expenses and costs as he has incurred or shall incur in connection with this matter and general damages on the footing of aggravated, exemplary and punitive damages. ■
 - c. The costs of the Petition be awarded to the Petitioner.
2. This court has considered the Petition and submissions therein. It is a finding of fact that on June 8, 2011 the 1st Respondent published in the Kenya Gazette Vol. CXI- No. 51 Notice Number 6332 revoking titles relating to several parcels of land, among them was MN/1/3092. The Notification of Revocation of the title was done on the ground that the parcel of land was 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 notice declared the allocations as illegal and unconstitutional on the ground of public need and interest. The government proceeded to revoke the title to MN/1/3092 as it was reserved for Kenya Revenue Authority.
3. The title to the suit property MN/1/3092 is a Grant No. CR 33601 which was a lease from the Commissioner of Lands dated April 1, 1998 for a term of 99 years. The lease was initially issued by the Commissioner of lands to Patch Masiga who sold and transferred it to the Petitioner. The Petitioner



has produced an agreement of sale dated March 23, 2009 where Patch Masiga sold the suit property to Abdulkarim Saleh Mohsen. On 1st September 2009 the suit property was transferred into the name of the Petitioner. The regime of the law that governed the suit property was Registration of Title Act (now repealed) and the title to the suit property was held subject to payment of annual rent of Kshs 40,000/= and the provisions of the Government Lands Act Cap 280 (now repealed).

4. The Certificate of Title dated July 5, 2000 was a grant from the President who in Section 3 of the Government Lands Act Cap 280 had powers to make grants over unalienated Government land. The President delegated these powers to the Commissioner of Lands to deal with Government lands under the Act. These powers granted to the Commissioner of lands were limited to executing leases on behalf of the President. Section 7 stated: -

The Commissioner may, or an officer at the lands department subject to special directions from the president, execute for and on behalf of the president any Conveyance, lease or licence of or for the occupation of Government lands, and do any act or thing, exercise any power and give any order or direction and sign or give any document, which may be done, exercised, given or signed by the president under this Act.”

5. The question of whether the Commissioner of Lands could legally alienate un-alienated public land has been considered in the past by the Supreme Court in an advisory opinion - In the Matter of the National Land Commission (2015) eKLR in which the Court remarked as follows:

Section 3 of the Government Lands Act (GLA) conferred powers on the President to make grants of freehold or leasehold of un-alienated Government land. Section 7 prohibited the Commissioner of Lands from exercising the powers of the President under Section 3, subject to certain exceptions; though the President could (and did) delegate his powers to the Commissioner. Procedures were laid out, to guide the allocation of Government land; but those were not duly followed, subsequently. The Government treated public land as its “private property”, and the public-interest element in administration and allocation of public land was negated. The Commissioner of Lands was making allocations of land by direct grant, routinely exceeding his authority. (Such excesses of power are well documented in the Ndungu Report).”

6. The Court of Appeal in James Joram Nyaga & another vs Attorney General & another (2019) eKLR held that;

It follows that the onus was on the appellants to satisfy court that the Commissioner of Lands had requisite powers to grant the suit property to them. The appellants were indeed required to do more in proving that the legal and right procedure was followed in alienating the suit property to them. Bare denials of fraud on their part in acquiring the suit property or assertions that they acquired the suit property legally above board would not suffice.

7. As it is, other than the certificate of title and the letter of allotment, the appellants did not produce any other evidence to show that the procedure required for alienation of the suit property was followed. There was no evidence tendered of documents from the Department of Survey to show planning or surveying before a land reference number was issued in respect of the suit property. Other than the certificate of title and the allotment letter, the appellants failed to produce any other document in support of their case. It is our view that they failed to prove they were legally entitled to the suit property especially in the face of counter allegations that the suit property had never been de-gazetted as public land, was not available for alienation by the Commissioner of Lands and the respondents’ insistence that the appellants acquired the suit property illegally thus necessitating their eviction. As correctly



observed by the trial court, the Commissioner of Lands had no authority to alienate the suit property to the appellants as he purported to do. That was the preserve of the President. It follows, therefore, that the Commissioner of Lands could not have made any grant under the Government Lands Act, nor could he pass any registerable title under the Registration of Titles Act.

8. In light of the findings and from a reading of Section 3 and 7 of the Government Lands Act, only the President of Kenya and not the Commissioner of Lands had power to alienate un-alienated Government land. The Commissioner of Lands acted without jurisdiction when he allocated and processed title to the suit property in favour of Patch Masiga who subsequently sold it to the Petitioner. It is the finding of the court that the Commissioner of Lands could not make any grant under the Government Lands Act Cap 280 nor could he pass any registerable title under the Registration of Titles Act Cap 281. The Government was the original owner of the suit property hence no further title could be issued to a private person as the Petitioner. The issuance of the title to the Petitioner was irregular and a nullity. The Petitioner cannot rely on indefeasibility of title under the Registration of titles Act Cap 281, which is a right protected by Article 40 of the Constitution of Kenya.
9. The Petitioner had no title to the suit property and the actions of the 1st Respondent of 6th June 2011 was not an act of compulsory acquisition of the suit property. The court finds that the Petitioner has no right to the suit property hence there was no denial of rights. Further the Petitioner has generally alleged that the Respondents violated his rights enshrined in Articles 3, 10, 27, 40, 47 and 50 (1) of the constitution. The Petition has failed to meet the requirements for Constitutional Petitions set out in Anarita Karimi Njeru vs Republic (1979) eKLR, where the court held that;

We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”

10. The above principles in Anarita Karimi was emphasized by the Court of Appeal in Mumo Matemu vs Trusted Society of Human Rights Alliance & 5 others (2013) eKLR where the court of Appeal held that;

However, our analysis cannot end at that level of generality. It was the High Court’s observation that the petition before it was not the “epitome of precise, comprehensive, or elegant drafting.” Yet the principle in Anarita Karimi Njeru (*supra*) underscores the importance of defining the dispute to be decided by the court.”

11. The upshot is that the Amended Petition dated May 23, 2019 lacks merit and is dismissed with costs to the Respondents.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 26TH DAY OF OCTOBER 2022.

N.A. MATHEKA

JUDGE

