



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI**

MISC. APPLICATION NO 1379 OF 2004

IN THE MATTER OF REGISTRATION OF TITLES ACT, CAP 281 LAWS OF KENYA

AND

**IN THE MATTER OF THE GOVERNMENT LANDS ACT, CAP 280 OF THE LAWS OF
KENYA**

AND

**IN THE MATTER OF AN APPLCIATION FOR LEAVE TO APPLY FOR ORDERS OF
JUDICIAL REVIEW**

BETWEEN

REPUBLIC..... APPLICANT

AND

THE MINISTER OF LANDS AND

HOUSING..... 1ST RESPONENT

THE PERMANENT SECRETARY

MINISTRY OF LANDS AND HOUSING..... 2ND RESPONENT

THE ATTORNEY GENERAL..... 3RD RESPONENT

JUDGMENT

Pursuant to the Leave which was granted on 15th October, 2004 the Applicant moved this Court by a Notice of Motion dated 19th October, 2004 and filed in Court on 21st October, 2004 for Orders:-

1. THAT an Order of Certiorari do issue to remove to this Court for purposes of being quashed the decision of the Respondents (as expressed in their letters dated 18th August, 2004 and 9th September, 2004) to re-possess, acquire, sell disposes and deprive the Applicant of the property known as House No. 49 Mugoya South C.
2. THAT an order of Prohibition do issue directed at

the Respondents restraining them howsoever from re-possessing acquiring, selling, or in any

other way dis-possessing the Applicant of the property known as house Number 49, Mugoya South C.

3. THAT the Respondents be compelled to pay the costs of the Application.

The Application was expressed to be bought under Order LIII of the Civil Procedure Rules, Sections 8 and 9 of the Law Reform Act, and all enabling provisions the Law.

The Application was supported by the statutory statement and verifying Affidavit sworn by the Applicant. The verifying Affidavit and statutory statement, in summary, set out the background facts and the acts constituting the cause of action.

In a nutshell the Applicant was allocated House Number 49, Mugoya Estate, South Con 19th November, 1998 by virtue of a letter of allotment dated 14th December, 1998. Pursuant to the said letter the Applicant paid out to the Government the total amount set out in the letter. She also complied with all the conditions contained in the said letter of allotment.

However, sometime in June, 2004 the Applicant received a letter from the 1st Respondent demanding rent for the premises. The Respondent followed up the matter with a reminder dated 5th July, 2004. However being the proprietor of the suit premises, the Applicant could not understand how she could be a tenant in her own house. The said letters threatened the Applicant with eviction in the event that the arrears of rent totalling 772,000/= was not paid. By a further letter dated 18th August, 2004 the 2nd Respondent wrote to various officers of the Government notifying the said officers of an intended sale of various Government houses including that belonging to the Applicant by the Government. The Applicant states that she was not heard at all by the Respondent, before the decision complained of was made, that she is entitled to the suit premises by virtue of having made all the payments required and demanded of her by the Government.

Finally, on 9th September, 2004, the Applicant once again received a letter from the 2nd Respondent in which the Government offered to sell the subject premises to the Applicant in the total sum of Kshs.2,836,666/=. The Applicant complains that the letter aforesaid did not take into account the fact that the Applicant was a purchaser of the suit premises and had paid fully to the amount Government the purchase price pursuant to the letter of allotment. That the said letter ignored the fact that before she bought the property it had been valued by Government valuers. It was the Applicant's view that the Respondents in purporting to act as they did clearly acted in excess of their lawful mandate and or jurisdiction.

The Application was served on the Respondents who appointed the Attorney General to represent them. The Attorney General duly filed Notice of Appointment of Advocates on 5th November, 2004 but filed no other papers in response or opposition to the claim by the Applicant. On 7th April, 2005, when the matter came before me for hearing the Respondents had still not filed any pleadings in Response to the Applicant's Notice of Motion. Worse still, the Attorney General did not even bother to appear for the hearing of the Application although the hearing date was given by Honourable the Chief Justice in the presence of Mr. Makori, Learned Counsel for the Applicant and a Mr. Mwaniki, from the Attorney General's Chambers. As there was no explanation for the absence of the representative from the Attorney General's Chambers on the material date, I allowed the Application to be argued ex-parte.

While prosecuting the Application Mr. Makori submitted that, the orders sought in the Notice of Motion dated 19th October, 2004 were to quash the decision of the Respondents expressed in the letters dated 18th August and 9th September, 2004 respectively in which the Respondents have threatened to re-possess from the Applicant her house known as House No. 49, Mugoya South C. Further an order of Prohibition is sought to prohibit the Respondent from in any way dispossessing the Applicant of the suit premises. Mr. Makori submitted that the decision contained in the aforesaid letters was taken unilaterally and without affording the Applicant a hearing. He further submitted that the Applicant in acquiring the

house had complied with all the terms imposed by the Government in the letter of allotment. There was therefore nothing irregular in the manner in which the house was acquired to warrant the impugned action of the Respondents. The Respondents in issuing the said letters ignored the fact that the Applicant was in possession of the house and had made substantive improvements to the same. There was no attempt at all to compensate the Applicant for the amounts that the Applicant had invested in the property.

Finally Mr. Makori submitted that the Respondents having allocated the subject premises to the Applicant who placed her reliance on their actions and conduct, were estopped from seeking to deprive the Applicant of the suit premises.

As already stated the Respondents though aware of the hearing of the Application did not bother to turn up. Further though served with the Notice of Motion, they did not file any reply to the Application. Consequently the depositions of the Applicant remain unchallenged and uncontroverted. Similarly what is stated in the statutory statement remains unchallenged and uncontested. In the premises, this Court has no other alternative view of the matter. The best the Court can do is to believe the Applicant's story. There is evidence on record that the Applicant came into possession of house Number 49, Mugoya South C by virtue of a letter of allotment dated 14th December, 1998 and signed for the Commissioner of Lands by one SKW Wangila. The letter of allotment aforesaid required the Applicant to comply with certain conditions one of which included payment of Kshs.900,810/= within 30 days. The Applicant duly complied with all the terms contained and conditions in the letter of allotment. In the same letter of allotment it was stipulated therein that **"this letter of allotment is subject to, and the grant will be made under the provisions of, the Government Lands Act (Cap 280 of the Revised Edition of the laws of Kenya) and title will be issued under the Registration of Titles, Act (Cap 281) or the Registered Land Act (Cap 300)."**

It was further provided in the same letter of allotment and which is significant that

"the issue of the Government grant or lease will be undertaken as soon as circumstances permit..... " It would appear from the foregoing that there was no time frame within which the grant and certificate of title would be issued to the Applicant by the Government. Having paid the necessary consideration and complied with all the conditions contained in the letter of allotment, the Applicant was home and dry and all she was waiting for were documents of title from the Government.

I agree with Counsel for the Applicant that in purporting to cancel the aforesaid sale and then unilaterally, and without hearing the Applicant re-possess, acquire and sell the suit premises is callous to the extreme and is a decision which must of necessity attract the intervention of this Court. What is even of more concern to the Court is that though the Government had received the sum of Kshs.900,810/= from the Applicant in respect of the suit premises, in purporting to re-possess the property from the Applicant the Respondents had not as much as offered to reimburse the Applicant the amount so paid.

The Court is aware of the Court of Appeal Decision in **DR. JOSEPH W. K. ARAP NG'OK-VS- JUSTICE MOJO OLE KEIWUA & OTHERS, CIVIL APPLICATION NO. 60 OF 1997** in which the Court held that **"it is trite that title to landed property can only come into existence after issuance of letter of allotment, meeting the conditions stated in such letter and actual issuance thereafter of title document pursuant to the provisions in the Act under which the property is held."**

In the instant case the Applicant was issued with a letter of allotment, she duly complied with the conditions stipulated therein and was only awaiting the documents of title to issue from the Respondents, when the Respondents did a hasty retreat and purported revoke and or recall the letter of allotment. Their action cannot be countenanced by a Court of Justice. The Respondents as correctly submitted by the Counsel for the Applicant should be estopped from seeking to deprive the Applicant of the ownership of the suit premises. It was upto them to issue the title documents to the Applicant in respect of the suit premises. They have not done so. They cannot use that fact as an excuse to dispossess the Applicant of the suit premises. More worrying is the fact that in purporting to dispose the Applicant of the suit premises, they failed to accord the Applicant the right to be heard. To my mind therefore this is a clear case that calls for the order of Certiorari and Prohibition.

In the premises, I direct that the decision of the Respondents to re-possess, acquire, sell, dispossess and deprive the Applicant of the property known as House Number 49 Mugoya South C contained in their letters dated 18th August and 9th September, 2004 respectively shall be quashed forthwith on their removal into the High Court.

Further, an Order of Prohibition shall issue prohibiting the Respondents from repossessing, acquiring, selling, or in any other way dis-possessing the Applicant of the property known as House Number 49, Mugoya South C.

The Applicant shall have the costs of these proceedings to borne by the Respondents jointly and severally.

Orders accordingly

Dated at Nairobi this 10th day of May 2005

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M. S. A. MAKHANDIA

JUDGE